



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: July 23, 2024

FROM: Caleb Bauer, DCI Executive Director

SUBJECT: Studebaker Admin Development agreement; Union Station Purchase Agreement; Former Claeys Purchase Agreement

Funding Source* (circle one) River West; River East; South Side; Douglas Road; West Washington; RDC General

*Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

Purpose of Request: Approval of real estate purchase agreement for the \$2.43M purchase of the Grand Hall and Parking Lot of Union Station, sale of former Claeys Candy building, and Development Agreement for the stabilization of the Studebaker Administration Building

Specifics: The Department of Community Investment requests approval of the purchase of the 0.95 acres that includes the Grand Hall and Parking Lot of Union Station for a purchase price of \$2.43M (which reflects the average of two independent appraisals). The administration believes that ownership of this historic building is a good long-term investment for the Commission and could facilitate passenger rail connections in partnership with Amtrak in the near future.

Related to the purchase, staff also request approval for a sale of the former Claeys Candy building for \$1,000 to allow for its activation as part of a new data center owner at the remaining Union Station property.

Separately but related, staff propose approval of a Development Agreement with Studebaker Admin QOZB LLC for the stabilization of the Studebaker Administration building. The Commission would commit no more than \$825,000 for lead and asbestos identification and abatement to be paired with a private investment commitment of \$3.3M. Though this agreement does not fully activate the building, it will stabilize and preserve it and ensure that it can be redeveloped in the future.

 Pres/V-Pres

ATTEST:  Secretary

Date: 7-25-2024

APPROVED Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement"), is effective as of 7/25/24, 20__ (the "Effective Date"), by and between the City of South Bend, Indiana, Department of Community Investment, acting by and through its governing body, the South Bend Redevelopment Commission ("Commission"), (collectively, "City"), and Studebaker Admin QOZB, LLC, an Indiana limited liability company with offices at 506 W South Street, Suite 210, South Bend, IN 46601 (the "Developer") (each, a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the "Act"); and

WHEREAS, the Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, the Developer has a Purchase Term Sheet agreement with Studebaker Center, LLC, the owner of certain vacant and inactive real property described in **Exhibit A**, together with the building (the "Building"), surface parking areas, and drive areas located thereon, and all fixtures, easements, rights, licenses, and other interests appurtenant thereto (collectively, with the Building, the "Developer Property"); and

WHEREAS, the Developer currently has private financing and desires to renovate or otherwise rehabilitate certain elements of the Developer Property (the "Project") in accordance with the project plan (the "Project Plan") attached hereto as **Exhibit B**; and

WHEREAS, the Developer Property is located within the corporate boundaries of the City of South Bend, Indiana (the "City"), within the River West Development Area (the "Area"); and

WHEREAS, the City has adopted (and subsequently amended, from time to time) a development plan, which contemplates development of the Area consistent with the Project; and

WHEREAS, before the Developer can develop the Developer Property, certain environmental matters contained therein must be identified and abated and other improvements must be made to the Building to prevent its further degradation; and

WHEREAS, the Developer Property is considered a local historic landmark with great significance to the City's history, and its activation will contribute to the ongoing revitalization of the area surrounding it; and

WHEREAS, the City believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the City desires to facilitate and assist the Project by undertaking the local public improvements stated in **Exhibit C** (the "Local Public Improvements") and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act.

WHEREAS, concurrently with the execution of this Agreement, the Parties shall enter into, or cause the execution of: (i) a certain Purchase Agreement in which City shall purchase from Developer the property located at 506 W. South Street in South Bend, Indiana, commonly known as Union Station (the "Union Station Purchase Agreement"); and (ii) a certain Purchase Agreement in which Developer shall purchase from City the property located at 525 S. Taylor Street in South Bend, Indiana, formerly known as Claey's Candy (the "Claey's Purchase Agreement"); and

WHEREAS, the Parties acknowledge that the execution of the this Agreement and the transfer of the property contemplated in the Union Station Purchase Agreement are conditions precedent to the Parties effecting the transfer of property contemplated in the Claey's Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated in this Agreement, the adequacy of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS.

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Assessed Value. "Assessed Value" means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 Board of Works. "Board of Works" means the Board of Public Works of the City, a public body granted the power to award contracts for public works pursuant to I.C. 36-1-12.

1.3 Funding Amount. "Funding Amount" means an amount not to exceed Eight Hundred Twenty-Five Thousand Dollars (\$825,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.4 Private Investment. "Private Investment" means an amount no less than Three Million Three Hundred Thousand Dollars (\$3,300,000.00), not including the Funding Amount, to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project that are expected to contribute to increases in the Assessed Value of the Developer Property. Upon reasonable demand, Developer must provide written proof to City of its ability to finance its obligations contained herein this Section 1.4.

SECTION 2. INTERPRETATION, TERMS, AND RECITALS.

2.1 Interpretation.

(a) The terms "herein," "hereto," "hereunder," and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) "Section" or "Article" shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) "Exhibit" shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this "Agreement" shall

mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include,” “including,” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

SECTION 3. ACCESS.

3.1 Grant of Easement. The Developer will grant to the City a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer Property (the “Easement”) in the form attached hereto as Exhibit D, to permit the City to fulfill its obligations under this Agreement, including the construction, equipping, inspection, and delivery of the Local Public Improvements. The Easement shall (a) inure to the benefit of the City or any contractors acting on behalf of the City in connection with the construction, equipping, inspection, and delivery of the Local Public Improvements; (b) shall bind the Developer and its grantees, successors, and assigns; and (c) shall terminate no later than upon completion of the Local Public Improvements, as determined by the City.

SECTION 4. DEVELOPER’S OBLIGATIONS.

4.1 Generally. The Parties acknowledge and agree that the City’s agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the Developer’s commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

4.2 The Project.

(a) The Developer will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the City Planner, or his designee, pursuant to Section 4.7 (“Submission of Plans and Specifications for Project”) of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(b) The Developer will expend the Private Investment to complete the Project in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the City pursuant to Section 4.7 (“Submission of Plans and Specifications for Project”) of this Agreement.

4.3 Cooperation. The Developer agrees to endorse and support the City’s efforts to expedite the Local Public Improvements through any required planning, design, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer agrees to use reasonable and good faith efforts obtain any and all easements from any governmental entity and/or any other third parties that the Developer or the City deems necessary or advisable in order to complete the Local

Public Improvements, and the obtaining of such easements is a condition precedent to the City's obligations under this Agreement, and City agrees to cooperate with Developer in securing same.

4.5 Timeframe for Completion. The Developer hereby agrees (i) to make reasonable and good faith substantial progress toward completion of the Project as set forth in the Project Plan and any other obligations the Developer may have under this Agreement within three (3) years of the completion of the Local Public Improvements (the "Projected Project Completion Date"), and (ii) the total Project will be completed in accordance with the Project Plan attached hereto as **Exhibit B**. The Developer may request a two (2) year extension of Projected Project Completion Date with 180 days' written notice to the City prior to the Projected Project Completion Date, which extension request shall not be unreasonably denied (the "Extension").

4.6 Reporting Obligations.

(a) Upon the letting of contracts for substantial portions of the Project and again upon substantial completion of the Project, the Developer hereby agrees to report to the City the number of local contractors and local laborers involved in the Project, the amount of bid awards for each contract related to the Project, and information regarding which contractor is awarded each contract with respect to the Project.

(b) On or before June 30 and December 31 of each year until substantial completion of the Project, the Developer shall submit to the City a report, in the format set forth as **Exhibit E**, demonstrating the Developer's good-faith compliance with the terms of this Agreement. The report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the project schedule, (iii) an itemized accounting generally identifying the Private Investment to date, and (iv) a status report of the number of jobs created for employment at the Developer Property.

4.7 Submission of Plans and Specifications for Project. City and Developer acknowledge and agree that the Property and its reuse pose significant and unique challenges that impact the ability of Developer to create a definitive restoration plan and restoration work timeline until City completes the Local Public Improvements as defined in **Exhibit C**. By execution of this document, City does hereby provide approval of the conceptual Exterior, Floor Plans and Interior as depicted in **sub-Exhibits B-4, B-5, and B-6**.

4.8 Submission of Environmental, Engineering, Title, and Survey Reports. Developer shall deliver to the Commission a complete copy of all known environmental inspection reports, engineering, title, and survey reports and other related documents pertaining to the Property, which are in the possession of the Developer. Such records shall be delivered prior to execution of this agreement.

4.9 Costs and Expenses of Construction of Project. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses of planning, construction, management, and all other activities or purposes associated with the Project (including legal, architectural, and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the City by and through the Funding Amount subject to the terms of this Agreement.

4.10 Specifications for Local Public Improvements. The Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and the Developer will pay all costs and expenses of such preparation, provided, however, that if the City pays any costs or expenses of such preparation, then the amount paid by the City will be deducted

from the Funding Amount. The Developer will submit all bid specifications related to the Local Public Improvements to the City of South Bend Engineering Department (the "Engineering Department"). The Engineering Department may approve or disapprove said bid specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same. The City shall not be required to expend the Funding Amount unless the Engineering Department has approved all bid specifications, such approval not to be unreasonably withheld.

4.11 Non-Interference. Developer hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Developer Property during construction of the Project.

4.12 Insurance. The Developer shall purchase and maintain comprehensive insurance coverage as is appropriate for the work being performed with respect to the Project. The Developer shall provide proof of such adequate insurance to the City and shall notify the City of any change in or termination of such insurance. During the period of construction or provision of services regarding any Local Public Improvements, the Developer shall maintain insurance in the kinds and for at least the minimum amounts as described in Exhibit F attached hereto and the City and the City shall be named as additional insureds on such policies (but not on any worker's compensation policies).

4.13 Information. The Developer agrees to provide any and all due diligence items with respect to the Project reasonably requested by the City.

SECTION 5. CITY'S OBLIGATIONS.

5.1 Generally. The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the City's commitment to perform and abide by the covenants and obligations of the City contained in this Agreement.

5.2 Completion of Local Public Improvements.

(a) The City hereby agrees to complete (or cause to be completed) the Local Public Improvements described in Exhibit C attached hereto on a schedule to be reasonably determined and agreed to by the City and the Developer prior to execution of this agreement, as may be modified due to unforeseen circumstances and delays.

(b) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the Engineering Department or its designee. City and City's contractors acting on City's behalf in connection with the Local Public Improvements shall undertake all actions under or pursuant to this Agreement in a reasonable fashion, and in compliance with all applicable laws, rules and regulations, and in a fashion reasonably calculated and using commercial reasonable efforts to minimize disruption and to cause as little interference with Developer's development of the Property during completion of the Local Public Improvements.

(c) In the event the costs associated with the Local Public Improvements are in excess of the Funding Amount, City shall pay the amount of the excess costs to permit timely completion of the Local Public Improvements by the City, or an agent of the City,

which amounts shall be applied for such purpose. Notwithstanding the foregoing, the City shall have no obligation to pay the excess costs unless the Developer increases its Private Investment by two dollars for every one dollar in excess costs paid by City above the original Funding Amount. The City will provide transparency to the Developer regarding costs associated with the Local Public Improvements. Prior to paying any excess costs, City will provide a change order to Developer explaining the purpose and need.

5.3 Cooperation. The City agrees to endorse and support the Developer's efforts to expedite the Project through any required planning, design, permitting, waiver, and related regulatory processes, provided, however, that the City will not be required to expend any money in connection therewith.

5.4 Public Announcements, Press Releases, and Marketing Materials. The City hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

SECTION 6. ENVIRONMENTAL MATTERS.

6.1 Environmental Indemnity. Following the execution of this Agreement, the City and the Developer shall execute an Environmental Indemnity, Abatement, and Access Agreement in the form at Exhibit G, attached hereto and incorporated herein, with such further changes as may be agreed by the Parties hereto as evidenced by the execution thereof.

SECTION 7. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

7.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel. In no event shall the City be required to bear the fees and costs of the Developer's attorneys, and in no event shall the Developer be required to bear the fees and costs of the City's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 7.1, which shall survive such invalidation, nullification, or setting aside.

SECTION 8. DEFAULT.

8.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30)

days after the notice described in this Section 8.1, then no default shall exist and the noticing Party shall take no further action.

8.2 Reimbursement Obligation. In the event that the Developer fails (a) to complete the Project by the latter of the Projected Project Completion Date or the end of the Extension, or (b) to expend the full amount of the Private Investment by the latter of the Projected Project Completion Date or the end of the Extension, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Twenty-Five Percent (125%) of the portion of the Funding Amount expended by the City in furtherance of the Local Public Improvements as of the date of the Commission's demand, excepting that the maximum repayment/reimbursement obligation by Developer is subject to a pro rata reduction based on the then existing percentage of the Private Investment made to date by the Developer, as liquidated damages ("Liquidated Damages"). The Parties acknowledge and agree that the actual damages to the Commission, the City, and its citizens in the event of a default by Developer would be difficult or impossible to determine, and the Liquidated Damages set forth above represents the best estimate of the Parties as to the amount of such damages at the time of execution and delivery of this Agreement. If the Developer fails to perform and complete the work within the timeframe fixed for completion, the Liquidated Damages shall be considered not as a penalty, but as agreed upon monetary damages sustained by the Commission, the City, and citizens of South Bend for the Commission's direct investment into the Project, the negative impact upon the Commission's ability to develop other projects in South Bend, and expenses of City employees supporting the Project, including, redevelopment staff, engineering staff, legal department staff, and a construction manager on site.

8.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of "Force Majeure"). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

SECTION 9. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST; INDEMNITY.

9.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

- (a) The Project is a private development;
- (b) Neither the City nor the Developer has any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the City, and/or the Developer expressly accepts the same; and
- (c) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and the Developer and agree that

nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City, and the Developer.

9.2 Conflict of Interest; City Representatives Not Individually Liable. No member, official, or employee of the City or the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the City or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, manager, officer, employee, or agent of the Developer or successors of them shall be personally liable to the City under this Agreement.

9.3 Indemnity.

(a) The Developer agrees to indemnify, defend, and hold harmless the City from and against (i) any third-party claims suffered by the City resulting from or incurred in connection with the Local Public Improvements or the Project, other than those arising from the City's acts of gross negligence or intentional or willful misconduct, and (ii) all claims, demands, suits, and damages arising out of the negligent or intentional or willful misconduct of Developer while performing Developer's obligations under this Agreement.

(b) The City agrees to indemnify, defend, and hold harmless the Developer from and against all claims, demands, suits, and damages resulting from the City's acts of gross negligence or intentional or willful misconduct while performing City's obligations under this Agreement.

SECTION 10. MISCELLANEOUS.

10.1 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.

10.2 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.

10.3 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals

(to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

10.4 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.

10.5 Attorneys' Fees. In the event any Party pursues any legal action (including arbitration) to enforce or interpret this Agreement, the defaulting Party shall pay the non-defaulting Party's reasonable attorneys' fees and other costs and expenses (including expert witness fees).

10.6 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

10.7 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

10.8 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer:

Studebaker Admin QOZB, LLC
Attn: Kevin M. Smith, Member
506 W South St, Suite 210
South Bend, IN 46601

With copies to:

Mitchel Dick McNelis LLC
Attn: Michael T. McNelis
9247 N Meridian Street, Suite 350
Indianapolis, IN 46260

and

IQI Balanced Intelligence, LLC
Attn: Contract Manager
506 W South Street, Suite 210
South Bend, IN 46601
Email: j.nagy@globalaccesspoint.com

City:

South Bend Redevelopment Commission
1400S County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Executive Director,
South Bend Department of Community Investment

With a copy to:

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

10.9 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

10.10 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

10.11 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of

the Parties herein.

10.12 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. The Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the City's prior written consent to such assignment, such consent not to be unreasonably withheld. In the event the Developer seeks the City's consent to any such assignment, the Developer shall provide to the City all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

10.13 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.

10.14 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

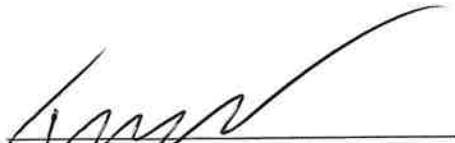
10.15 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

10.16 Time. Time is of the essence of this Agreement.

Signature Page Follows

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

**SOUTH BEND REDEVELOPMENT
COMMISSION**



Troy Warner, President

ATTEST:



Vivian G. Sallie, Secretary

STUDEBAKER ADMIN QOZB, LLC



Kevin M. Smith, Member

EXHIBIT A

Description of Developer Property

Key No. 018-3018-0652 - South Bend Portage (Pt. Parcel I)
State Id No. 71-08-12-309-001.000-026

Key No. 018-3018-0653 - South Bend Portage (Pt. Parcel I)
State Id No. 71-08-12-309-002.000-026

Key No. 018-3018-0657 - South Bend Portage (Pt. Parcel II)
State Id No. 71-08-12-309-003.000-026

Key No. 018-3018-0658 - South Bend Portage (Pt. Parcel II)
State Id No. 71-08-12-309-004.000-026

Key No. 018-3018-0659 - South Bend Portage (Pt. Parcel II)
State Id No. 71-08-12-309-005.000-026

Key No. 018-3018-0687 - South Bend Portage (Parcel III)
State Id No. 71-08-12-352-001.000-026

Key No. 018-3018-0672 - South Bend Portage (Pt. Parcel IV)
State Id No. 71-08-12-356-001.000-026

Key No. 018-3018-0673 - South Bend Portage (Pt. Parcel IV)
State Id No. 71-08-12-356-003.000-026

Legal Description:

Parcel I: A parcel located in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, and being Lots 28 and part of Lot 29 of the recorded Plat of Martin & Tutt's Addition to the Town, now City of South Bend. Being more particularly described as beginning at the Northwest corner of said Lot 28; thence North 89°32'54" East along the South right-of-way line of South street, a distance of 165.72 feet (rec. 165.00 feet) to a point on the West right-of-way line of a 14.00 foot public alley; thence South 00°42'03" East along said West right-of-way line, a distance of 132.19 feet (rec. 132.00 feet) to a point on the Northerly right-of-way of the New York Central Railroad; thence North 83°48'50" West along said Northerly right-of-way line, a distance of 166.75 feet (rec. 167.00 feet) to a point on the East right-of-way line of Lafayette Blvd.; thence North 00°47'19" West along said East right-of-way line, a distance of 112.92 feet (rec. 112.80 feet) to the point of beginning. Containing 0.47 acres more or less. Subject to all legal rights-of-way, easements and restrictions of record.

Parcel II: A parcel located in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, and being Lots 19 and 20 of the recorded plat of Martin & Tutt's Addition to the Town, now City of South Bend. Being more particularly described as beginning at the Northwest corner of said Lot 19; thence North 89°32'54" East along the South right-of-way line of South street, a distance of 165.72 feet (rec. 165.00 feet) to a point on the West right-of-way line of Main Street; thence South 00°36'48" East along said West right-of-way line, a distance of 132.24 feet to a point on the North right-of-way line of the New York Central Railroad; thence South 89°33'50" West along said North line, a distance of 165.51 feet (165.00 feet) to a point on the East right-of-way line of a 14.00 feet public alley; thence North 00°42'03" West along said West right-of-way line, a distance of 132.20 feet to the point of beginning. Containing 0.50 acres more or less. Subject to all legal rights-of-way, easements, and restrictions of record.

Parcel III: A parcel located in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, being tract number 1 as shown upon the recorded Plat of the Studebaker Corporation Replat, dated January 13, 1925 and recorded in the Recorder's Office of St. Joseph County, Indiana, Plat Book 11, pages 184 to 187 inclusive, and being more particularly described as: Beginning at the Southwest corner of said tract number 1; thence North 00°47'19" West along the West right-of-way line of Lafayette Blvd., a distance of 132.38 feet (rec. 132.24 feet) to a point on the Southerly right-of-way line of the New York Central Railroad; thence South 84°58'56" East along said Southerly right-of-way line, a distance of 346.25 feet (rec. 345.86 feet) to a point on the West right-of-way line of Main Street; thence South 00°36'48" East along said West right-of-way line, a distance of 99.68 feet (rec. 99.50 feet); to a point on the North right-of-way line of Bronson Street; thence South 89°35'56" West along said North right-of-way line, a distance of 344.18 feet (rec. 344.60 feet) to the point of beginning. Containing 0.92 acres more or less. Subject to all legal rights-of-way, easements, and restrictions of record.

Parcel IV: A parcel located in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, and being part of Lots 16 and 17 of the recorded plat of Martin & Tutt's Addition to the Town, now City of South Bend. Being more particularly described as beginning at the Northwest corner of said Lot 16; thence North 89°35'56" East along the South right-of-way line of Bronson Street, a distance of 124.79 feet (rec. 125.00 feet); thence South 00°30'00" East, a distance of 68.40 feet (rec. 68.00 feet); thence North 89°37'11" East, a distance of 39.98 feet (rec. 40.00 feet) to the West right-of-way line of a 14.00 foot public ally; thence South 00°32'41" East along said West right-of-way line, a distance of 55.37 feet (rec. 55.00 feet); thence South 89°38'26" West, a distance of 164.86 feet (rec. 165.00 feet) to a point on the East right-of-way line of Main Street; thence North 00°28'41" West along said East right-of-way line, a distance of 123.66 feet (rec. 123.00 feet) to the point of beginning. Containing 0.41 acres more or less. Subject to all legal rights-of-way, easement, and restrictions of record.

Property Address Reference: 635 South Main Street, South Bend, IN 46614

EXHIBIT B

Project Plan

The Developer will complete the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

Consistent with the terms of the Environmental Indemnity, Abatement, and Access Agreement specified in Section 6 of this Agreement and attached as **Exhibit G**, and in coordination with the City, the Developer will take measures to fully stabilize the Developer Property. The Developer shall also make all other improvements to the Building that are necessary to prevent its further degradation, specifically (a) ensure the building on the Property is weather tight, (b) repair/replace roof & drains, and (c) install polycarb over all existing window openings as temporary sealing, substantially in the form as depicted in the rendering attached hereto as **Exhibit B-1** (except as to the windows on the north facade of the Property, and as to such windows, only those windows needing polycarb in order to be weather tight), after filing a Certificate of Appropriateness application (where HLF I aids with the application language around details of installation, mothballing, venting, and the Secretary of Interior Standards such a request follows), and obtaining approval thereof (as it is not be an administratively approvable request) in a public meeting, where HLF I provides a letter of support, and attends the meeting to speak in favor of the application, until windows are refurbished/replaced (and window refurbishment timeline is predicated on coming to an agreement with HLF I on the method, and once a method is agreed to, materials can be ordered, and windows to be completed within 60 days of receiving materials on site at the Property). A letter of support from Indiana Landmarks to Historic Preservation Commission of South Bend and St. Joseph County attached as **Exhibit B-2** and Certificate of Appropriateness from the Historic Preservation Commission of South Bend and St. Joseph County attached as **Exhibit B-3**, (expired September 20, 2023, application to be refiled once the purchase of the Building closes).

Once a tenant for the Building is identified, the Developer will complete the exterior of the building similar to the Conceptual Exterior Plan attached as **Exhibit B-4**, and will work with the tenant to customize a floor plan with similar features, style, fit and finishes, as the Conceptual Floor Plans attached as **Exhibit B-5** and Interior Atrium View attached as **Exhibit B-6**.

Exhibit B-1

Exterior Polycarb Rendering



EXHIBIT B-2

Exterior Polycarb Letter of Support from Indiana Landmarks to Historic Preservation
Commission of South Bend and St. Joseph County



INDIANA LANDMARKS

Northern Regional Office

835 West Washington Street, South Bend, IN 46601

574.232.4733 • 800.476.1734

September 1, 2022

Historic Preservation Commission of South Bend
and St. Joseph County
14th Floor
227 W. Jefferson
South Bend, Indiana 46601

Dear Members of the Commission,

I am writing today to express support and provide information related to the application for window coverings at the Studebaker Administration building located at 635 S. Main Street in South Bend, Indiana. Landmarks supports the request as submitted.

Indiana Landmarks has reviewed and approved this proposal per our review as required under the Historic Preservation Covenants we hold on the property. The proposal to temporarily cover the window openings with a translucent poly carb material will be installed only in the openings and will not damage the masonry or other historic materials. It is reversible once a long-term strategy for the windows is developed and a final use is determined. In reviewing this we looked to guidance from the Secretary of the Interior treatments for mothballing vacant historic structures – [Preservation Brief 31](#).

Practically speaking, there is a need for this temporary solution to maintain a watertight envelope and aid in stopping broken glass from vandals while renovation plans are prepared. In the future the same coverings will provide opening closure once work on the windows is approved and commences in the future.

I am pleased to answer any questions that may arise. Thank you for your consideration and approval of this request.

Sincerely,

Todd Zeiger
Director, Northern Regional Office



ADAM TOERING
Historic Preservation
Administrator

ADAM TOERING

**POST IN A CONSPICUOUS PLACE ON THE STREET SIDE
OF THE PROJECT UNTIL COMPLETION OF ALL WORK.**



Sarah Andrews,
President

CERTIFICATE OF APPROPRIATENESS

The Historic Preservation Commission of South Bend and St. Joseph County has approved the following work:
Temporarily Cover windows with polycarbonate material to secure and protect

In-kind repair of roof

AVANTI GROUP LLC, Contractor
for the following location:

635 MAIN ST
South Bend, IN, 46614
Application No. 2022-0906

in the County of St. Joseph; State of Indiana; which is:

- Located in a Local Historic District Ord No. 3267-92
- A Local Historic Landmark

and found this application to be appropriate according to the Standards pertaining to Local Historic Landmarks and/or Local Historic Districts. Regulations pertaining to the Historic Preservation Commission are found in Chapter 21 (Zoning), South Bend Municipal Code and Chapter 26 of the St. Joseph County Code.

The issuance of this certificate does NOT in any manner, release the recipient from the responsibility of complying with the requirements of the zoning ordinances, building codes, safety codes, ADA or other requirements of the City of South Bend, the County of St. Joseph, the State of Indiana, or the United States Federal Government.

This certificate is good for one year from the date of issuance and is effective from the date entered herein. Plans are on file and open for public inspection at the office of the Historic Preservation Commission of South Bend and St. Joseph County, 227 West Jefferson Blvd., Suite 1400 S, South Bend, Indiana, during normal business hours.

HISTORIC PRESERVATION COMMISSION OF SOUTH BEND AND ST. JOSEPH COUNTY

Phone: (574) 235-9371
E-mail: SKSJCHEPC@southbendin.gov

THIS CERTIFICATE IS NOT TRANSFERABLE

NAME OF APPLICANT: Kevin Smith

DATE CERTIFICATE TAKES FORCE: 9/20/2022 DATE CERTIFICATE EXPIRES: 9/20/2023

CERTIFICATE ISSUED BY:
Ross Van Overberghe
Historic Preservation Specialist

POST IN A CONSPICUOUS PLACE ON THE STREET SIDE
OF THE PROJECT UNTIL COMPLETION OF ALL WORK.



ADAM TOERING
Historic Preservation
Administrator

Exhibit B-4
Exterior Conceptual Drawing



Exhibit B-5 Conceptual Floor Plans

1st Floor Plan



2nd Floor Plan



3rd Floor Plan



4th Floor Plan



Exhibit B-6

Interior Conceptual Drawings

Interior Atrium View



Interior Office View



EXHIBIT C

Description of Local Public Improvements

The City will complete, or cause to be completed, the following work (the "Local Public Improvements") in accordance with (i) the terms and conditions of this Agreement, (ii) in compliance with all applicable laws and regulations, and (iii) consistent with the terms of the Environmental Indemnity, Abatement, and Access Agreement specified in Section 6 of this Agreement and attached as Exhibit G, and defined therein as Abatement.

- Identification and abatement of lead and/or asbestos materials that are present in, on or at the Property or Building

- Abatement of all asbestos-containing materials associated with the Property and Building including removal and disposal in accordance with federal, state, and local rules and regulations, cause abatement of all lead paint conditions on the Property including removal and disposal in accordance with federal, state, and local rules and regulations, and cause any reasonable and necessary additional investigation or corrective action required to address contaminants, including but not limited to Hazardous Materials, that have been released onto the Property to ensure human health and the environment are protected as confirmed or certified in writing from the Indiana Department of Environmental Management under any applicable State of Indiana program, and such written confirmation shall include a 'No Further Action Letter,' "Certificate of Completion," or an equivalent document and shall cover the Property and Building, and all investigation or corrective action activities shall be completed in accordance with all federal, state, and local rules and regulations

EXHIBIT D

Form of Easement

GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the _____ of _____, 2024 (the “Effective Date”), by and between Studebaker Admin QOZB, LLC, an Indiana limited liability company with offices at 506 W South Street, Suite 210, South Bend, IN 46601 (the “Grantor”), and the South Bend Redevelopment City, governing body of the City of South Bend Department of Redevelopment, 1400S County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (the “Grantee”).

WITNESSETH:

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which Grantor hereby acknowledges, Grantor hereby grants, conveys, and warrants to Grantee a temporary, non-exclusive easement (the “Easement”) on, in, over, under and across the real property described in attached Exhibit 1 (the “Property”) for the construction, equipping, and delivery of certain improvements on the Property (the “Local Public Improvements”) defined in the Development Agreement, together with the right of ingress to and egress from the Easement for said purposes, all pursuant to a certain Development Agreement by and between Grantor and Grantee, dated _____, 2024 (the “Development Agreement”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Development Agreement.

The Easement granted herein shall pertain to the air, surface, and subsurface rights and interests of Grantor, for the use and benefit of Grantee, and its successors and assigns, to the extent necessary to accomplish and carry out the construction, equipping, and delivery of the Local Improvements on the Property. The Easement hereby granted includes the right and privilege for Grantee at reasonable times to clean and remove from said Easement any debris or obstructions interfering with said Easement.

The Easement granted herein, and its associated benefits and obligations, shall inure to the benefit of Grantee and Grantee’s contractors acting on Grantee’s behalf in connection with the Local Public Improvements shall undertake all actions under or pursuant to this Grant of Temporary Easement in a reasonable fashion, and in compliance with all applicable laws, rules and regulations, and in a fashion reasonably calculated and using commercially reasonable efforts to minimize disruption and to cause as little interference with Grantor’s development of the Property during completion of the Local Public Improvements.

Notwithstanding anything contained herein to the contrary, unless extended in writing by Grantor, the Easement shall terminate and be of no further force and effect on the date (hereinafter, the “Construction Termination Date”) of the earliest of the following: (a) completion of the Local Public Improvements; (b) expiration or earlier termination of the Development Agreement; or (c) such earlier date as Grantor and Grantee may agree to in writing.

Exhibit 1

Description of Property

Key No. 018-3018-0652 - South Bend Portage (Pt. Parcel I)
State Id No. 71-08-12-309-001.000-026

Key No. 018-3018-0653 - South Bend Portage (Pt. Parcel I)
State Id No. 71-08-12-309-002.000-026

Key No. 018-3018-0657 - South Bend Portage (Pt. Parcel II)
State Id No. 71-08-12-309-003.000-026

Key No. 018-3018-0658 - South Bend Portage (Pt. Parcel II)
State Id No. 71-08-12-309-004.000-026

Key No. 018-3018-0659 - South Bend Portage (Pt. Parcel II)
State Id No. 71-08-12-309-005.000-026

Key No. 018-3018-0687 - South Bend Portage (Parcel III)
State Id No. 71-08-12-352-001.000-026

Key No. 018-3018-0672 - South Bend Portage (Pt. Parcel IV)
State Id No. 71-08-12-356-001.000-026

Key No. 018-3018-0673 - South Bend Portage (Pt. Parcel IV)
State Id No. 71-08-12-356-003.000-026

Legal Description:

Parcel I: A parcel located in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, and being Lots 28 and part of Lot 29 of the recorded Plat of Martin & Tutt's Addition to the Town, now City of South Bend. Being more particularly described as beginning at the Northwest corner of said Lot 28; thence North 89°32'54" East along the South right-of-way line of South street, a distance of 165.72 feet (rec. 165.00 feet) to a point on the West right-of-way line of a 14.00 foot public alley; thence South 00°42'03" East along said West right-of-way line, a distance of 132.19 feet (rec. 132.00 feet) to a point on the Northerly right-of-way of the New York Central Railroad; thence North 83°48'50" West along said Northerly right-of-way line, a distance of 166.75 feet (rec. 167.00 feet) to a point on the East right-of-way line of Lafayette Blvd.; thence North 00°47'19" West along said East right-of-way line, a distance of 112.92 feet (rec. 112.80 feet) to the point of beginning. Containing 0.47 acres more or less. Subject to all legal rights-of-way, easements and restrictions of record.

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Property Address Reference: 635 South Main Street, South Bend, IN 46614

EXHIBIT E

Form of Report to City

City of South Bend
Department of Community Investment

Development Agreement Review

Answer the below questions and return to the Department of Community Investment.

Project Information

Project Name: _____

Address: _____

Construction Completed to Date:

Project Schedule Update:

Itemized Accounting of Private Investment to Date:

Number of Jobs Created:

Name: _____

Address: _____

Position: _____

Email: _____

Signature: _____

Date: _____

EXHIBIT F

Minimum Insurance Amounts

- | | | |
|----|------------------------------------|--|
| A. | Worker's Compensation | |
| 1. | State | Statutory |
| 2. | Applicable Federal | Statutory |
| 3. | Employer's Liability | \$100,000.00 |
| B. | Comprehensive General Liability | |
| 1. | Bodily Injury | |
| a. | \$5,000,000.00 | Each Occurrence |
| b. | \$5,000,000.00 | Annual Aggregate Products
and Completed Operation |
| 2. | Property Damage | |
| a. | \$5,000,000.00 | Each Occurrence |
| b. | \$5,000,000.00 | Annual Aggregate |
| C. | Comprehensive Automobile Liability | |
| 1. | Bodily Injury | |
| a. | \$500,000.00 | Each Person |
| b. | \$500,000.00 | Each Accident |
| 2. | Property Damage | |
| a. | \$500,000.00 | Each Occurrence |

EXHIBIT G

Form of Environmental Indemnity, Remediation, and Access Agreement

ENVIRONMENTAL INDEMNITY, ABATEMENT, AND ACCESS AGREEMENT

THIS ENVIRONMENTAL INDEMNITY, ABATEMENT, AND ACCESS AGREEMENT (the "Agreement") is made and entered into by and between the City of South Bend, Indiana, acting by and through its Board of Public Works and its Redevelopment Commission (collectively, "City"), and Studebaker Admin QOZB, LLC, an Indiana limited liability company ("Developer") (collectively, the "Parties") on the date that the Agreement has been fully executed below.

WHEREAS, Developer has a Purchase Term Sheet agreement with Studebaker Center, LLC, the owner of certain improved real estate commonly known as 635 South Main Street in South Bend, St. Joseph County, Indiana, as more particularly described in **Exhibit A** attached hereto (the "Property"); and

WHEREAS, the City desires to see the Property re-activated and the building located on the Property, commonly known as the Studebaker Administration Building (the "Building"), redeveloped, while retaining the architectural qualities and its status as a local historic landmark; and

WHEREAS, the City and Developer are entering into a Development Agreement for the stabilization and rehabilitation of the Building; and

WHEREAS, in connection with the Development Agreement and as an inducement to stabilize and develop the Property, Developer desires to enter into this Agreement, wherein the City (i) causes the identification and abatement of lead and/or asbestos materials that are present in, on or at the Property or Building, and (ii) cause abatement of all asbestos-containing materials associated with the Property and Building including removal and disposal in accordance with federal, state, and local rules and regulations, cause abatement of all lead paint conditions on the Property including removal and disposal in accordance with federal, state, and local rules and regulations, and cause any additional investigation or corrective action required to address contaminants, including but not limited to Hazardous Materials, that have been released onto the Property to ensure human health and the environment are protected as confirmed or certified in writing from the Indiana Department of Environmental Management under any applicable State of Indiana program, and such written confirmation shall include without limitation a 'No Further Action Letter', "Certificate of Completion", or equivalent document and shall cover the Property and Building, and all investigation or corrective action activities shall be completed in accordance with all federal, state, and local rules and regulations (collectively, "Abatement"); and

WHEREAS, the Parties wish to memorialize herein the terms and conditions under which they agree to participate in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The Parties hereby incorporate the above Recitals into this Agreement as if fully set forth herein.

2. Environmental Conditions. The Parties acknowledge that there may be lead or asbestos containing materials or lead paint conditions or contaminants, including but not limited to Hazardous Materials, that have been released onto, at, on or in the Property or Building which may be in excess of the Indiana Department of Environmental Management's ("IDEM") clean-up criteria or screening levels and that the City has agreed to expend funds to identify and abate such lead or asbestos containing materials or lead paint conditions or contaminants that have been released onto, in, on or at the Property or Building (collectively, "Environmental Conditions").

3. Indemnification. Subject to the terms of this Agreement, the City agrees to release, indemnify and hold harmless Developer, including any of its members, managers, directors, officers, agents, and employees (collectively, the "Indemnitees"), against and with respect to any and all damages, claims, losses, liabilities and expenses, including without limitation legal fees and environmental consulting or sampling fees or expenses, excluding internal management, administrative or overhead costs (the "Environmental Costs"), which may be imposed upon, incurred by or asserted against Developer arising out of, in connection with or relating to the Environmental Conditions set forth in Paragraph 2 above, or any other Hazardous Materials, known or unknown, that exist in the Building or at the Property as of the date of this Agreement.

4. Hazardous Materials Defined. As used herein, "Hazardous Materials" shall refer to:

- a. Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended from time to time, and regulations promulgated thereunder;
- b. Any "hazardous substance" as defined by CERCLA, as amended from time to time, and regulations promulgated thereunder;
- c. Any oil, hydrocarbon, petroleum, and related compounds;
- d. Any substance that is a pollutant or contaminant or is toxic, ignitable, reactive, or corrosive that is regulated by the City, St. Joseph County, the State of Indiana, or the United States of America;
- e. Any dry cleaning, laundry, or similar cleaning chemicals, solvents, fluids, or compounds;
- f. Any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to the applicable state, federal, or local governmental law, including asbestos and polychlorinated biphenyls; and
- g. Any other matter or material that is a pollutant or contaminant as determined by any governmental authority applicable to the Property.

5. Claims. The Indemnitees shall give the City prompt written notice of any claim asserted against one or more Indemnitees including, but not limited to, any notice of claim, demand, action, controversy, or suit which may give rise to a claim of indemnification under this Agreement. If the claim is covered by the Indemnity, the City shall undertake the defense of such

claim by counsel of its choosing at its sole cost and expense. The Indemnitees shall give the City and its counsel reasonable assistance and cooperation with respect to such defense. The City shall not be obligated to pay any legal or defense costs for claims not covered by the Indemnity.

If investigative, abatement, or remedial work is required to resolve any claim covered by the Indemnity, then the City shall have the right to select the environmental consultant and shall pay for such work at its sole cost and expense. The City shall not be obligated to pay any costs for investigative, abatement, or remedial work not covered by the Indemnity.

If the City, within thirty (30) days after notice of any claim covered by the Indemnity, fails to undertake defense, the Indemnitees shall have the right to undertake defense, including compromise or settlement thereof with counsel of their choosing, and to select an environmental consultant to perform environmental investigation and remediation work required to address such claim by an applicable government authority. The City shall be responsible for reimbursing the Indemnitees for these legal fees and costs. The City shall retain the right to assume such defense and environmental work, with legal counsel and an environmental contractor of its choosing.

6. Termination of Indemnity. The Indemnity set forth in Paragraph 3 above shall automatically terminate as to matters arising after the date of such termination (but not to matters arising prior thereto) on the earlier of:

- a. With regard to Environmental Conditions, the date that is seven and one half (7.5) years from the date of this Agreement; or
- b. The date that Developer, its successors or assigns, is deemed to be in non-compliance with its obligations under the Development Agreement with regard to Developer's Private Investment in the Property, and such non-compliance continues for more than 90 days after written notice to Developer from City advising of same. In determining non-compliance, the following calculation shall apply and control: For every One Dollar (\$1.00) actually expended by the City to complete the Abatement, Developer shall expend Four Dollars (\$4.00) in improvements to stabilize and rehabilitate the Building or Property.
- c. With regard to any other Hazardous Materials, the date that is fifteen (15) years from the date of this Agreement; or
- d. The date on which the City receives a Certificate of Completion or such other written confirmation or certification from IDEM under any applicable State of Indiana program, including without limitation a "no further action" letter that covers the Property.

7. Abatement. Subject to the terms of this Agreement, the City shall promptly perform the environmental investigations and corrective actions necessary to complete the Abatement.

8. Access. Developer grants the City and its agents and contractors reasonable access to and use of the Building and the Property to enable the City and its agents and contractors to obtain reasonable and necessary data and to implement any Abatement that the

City is required to perform under this Agreement. This license to access the Property and the Building shall continue for as long as is necessary to complete the Abatement. The City will provide Developer with reasonable prior notice of any required access to the Building and the Property.

9. Exposure Controls. Developer acknowledges that in the City's performance of any Abatement required under this Agreement, the City may propose applying corrective action standards (including, without limitation, risk-based corrective action standards) and/or the use of exposure controls, which are predicated on the assumptions that (i) the Property will be used for commercial and residential purposes, and (ii) no water wells used to supply water for human consumption, farming, or irrigation will be installed or used on the Property. Subject to the foregoing, Developer acknowledges and agrees to accept any such real property covenants, restrictions, or environmental notices that are required or permitted by IDEM or any other applicable governmental authority as part of a particular remediation plan to address Hazardous Materials contamination (collectively, a "Restrictive Covenant"). The parties agree that such Restrictive Covenant shall be set forth in an appropriate instrument approved by IDEM or other applicable governmental authority to be recorded in public records as part of any remediation plan that the City formally proposes to address Hazardous Materials at the Property.

10. Assignment of Agreement. This Agreement may not be assigned by either Party except with the prior written consent of the other Party, which consent shall not be unreasonably withheld.

11. No Third Party Benefit. This Agreement is not intended to inure to the benefit of any third party, against whom the Parties reserve any and all rights, claims and defenses.

12. Notices. All notices to be given under this Agreement shall be in writing and shall be deemed to have been given and served when delivered in person, by Federal Express, UPS or similar overnight carrier, or by depositing in the United States mail, postage pre-paid to the address set forth below or such other address as either party may have last specified by written notice to the other:

If to the City:

South Bend Department of Community Investment
c/o Executive Director
1400 County-City Building
227 W. Jefferson Blvd.
South Bend, Indiana 46601

With a copy to:

City of South Bend
Corporation Counsel
1200 County-City Building
227 W. Jefferson Blvd.

South Bend, Indiana 46601

If to Developer:

Studebaker Admin QOZB, LLC
Attn: Kevin M. Smith, Member
506 W South St, Suite 210
South Bend, IN 46601

With copies to:

Mitchel Dick McNelis, LLC
Attn: Michael T. McNelis
9247 N Meridian Street Suite 350
Indianapolis, IN 46260

and

IQI Balanced Intelligence, LLC
Attn: Contract Manager
506 W South Street, Suite 210
South Bend, IN 46601
Email: j.nagy@globalaccesspoint.com

13. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original with counterparts signed by one party when combined with counterparts signed by other parties to this Agreement constituting an original contract.

14. Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

15. 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.

16. Paragraph Headings. This Agreement shall be construed without reference to paragraph headings which are inserted only for convenience of reference.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana without regard to its conflicts of laws principles.

18. Entire Agreement. This Agreement and the Development Agreement contain the entire agreement of the parties relating to environmental investigation, abatement, and indemnification for the Property and supersedes all prior oral or written understandings, agreements or contracts, formal or informal, between the parties hereto pertaining to said subject.

19. Controlling Effect of This Agreement. To the extent that any provision in this Agreement conflicts with any provision in the Development Agreement and such conflict cannot be resolved by a consistent interpretation of the terms and conditions, this Agreement shall control, provided, however, that such interpretation shall not modify or change the rights and obligations of the parties contained in the Development Agreement.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned executed and delivered this Environmental Indemnity, Abatement and Access Agreement on the date set forth below the name of each.

**CITY OF SOUTH BEND, INDIANA
BOARD OF PUBLIC WORKS**

Elizabeth A. Maradik , President

Joseph R. Molnar, Vice President

Breana Micou, Member


Gary A. Gilot, Member

Murray L. Miller, Member


ATTEST: _____
Theresa M. Heffner, Clerk

Date: _____

**SOUTH BEND REDEVELOPMENT
COMMISSION**



Troy Warner, President

ATTEST: 

Vivian G. Sallie, Secretary

Date: 7/25/2024

STUDEBAKER ADMIN QOZB, LLC



Kevin M. Smith, Member

Date: 7/23/2024

EXHIBIT A

Description of Property

Key No. 018-3018-0652 - South Bend Portage (Pt. Parcel I)
State Id No. 71-08-12-309-001.000-026

Key No. 018-3018-0653 - South Bend Portage (Pt. Parcel I)
State Id No. 71-08-12-309-002.000-026

Key No. 018-3018-0657 - South Bend Portage (Pt. Parcel II)
State Id No. 71-08-12-309-003.000-026

Key No. 018-3018-0658 - South Bend Portage (Pt. Parcel II)
State Id No. 71-08-12-309-004.000-026

Key No. 018-3018-0659 - South Bend Portage (Pt. Parcel II)
State Id No. 71-08-12-309-005.000-026

Key No. 018-3018-0687 - South Bend Portage (Parcel III)
State Id No. 71-08-12-352-001.000-026

Key No. 018-3018-0672 - South Bend Portage (Pt. Parcel IV)
State Id No. 71-08-12-356-001.000-026

Key No. 018-3018-0673 - South Bend Portage (Pt. Parcel IV)
State Id No. 71-08-12-356-003.000-026

Parcel I: A parcel located in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, and being Lots 28 and part of Lot 29 of the recorded Plat of Martin & Tutt's Addition to the Town, now City of South Bend. Being more particularly described as beginning at the Northwest corner of said Lot 28; thence North 89°32'54" East along the South right-of-way line of South street, a distance of 165.72 feet (rec. 165.00 feet) to a point on the West right-of-way line of a 14.00 foot public alley; thence South 00°42'03" East along said West right-of-way line, a distance of 132.19 feet (rec. 132.00 feet) to a point on the Northerly right-of-way of the New York Central Railroad; thence North 83°48'50" West along said Northerly right-of-way line, a distance of 166.75 feet (rec. 167.00 feet) to a point on the East right-of-way line of Lafayette Blvd.; thence North 00°47'19" West along said East right-of-way line, a distance of 112.92 feet (rec. 112.80 feet) to the point of beginning. Containing 0.47 acres more or less. Subject to all legal rights-of-way, easements and restrictions of record.

Parcel II: A parcel located in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, and being Lots 19 and 20 of the recorded plat of Martin & Tutt's Addition to the Town, now City of South Bend. Being more particularly described as beginning at the Northwest corner of said Lot 19; thence North 89°32'54" East along the South right-of-way line of South street, a distance of 165.72 feet (rec. 165.00 feet) to a point on the West right-of-way line of Main Street; thence South 00°36'48" East along said West right-of-way line, a distance of 132.24 feet to a point on the North right-of-way line of the New York Central Railroad; thence South 89°33'50" West along said North line, a distance of 165.51 feet (165.00 feet) to a point on the East right-of-way line of a 14.00 feet public alley; thence North 00°42'03" West along said West right-of-way line, a distance of 132.20 feet to the point of beginning. Containing 0.50 acres more or less. Subject to all legal rights-of-way, easements, and restrictions of record.

Parcel III: A parcel located in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, being tract number 1 as shown upon the recorded Plat of the Studebaker Corporation Replat, dated January 13, 1925 and recorded in the Recorder's Office of St. Joseph County, Indiana, Plat Book 11, pages 184 to 187 inclusive, and being more particularly described as: Beginning at the Southwest corner of said tract number 1; thence North 00°47'19" West along the West right-of-way line of Lafayette Blvd., a distance of 132.38 feet (rec. 132.24 feet) to a point on the Southerly right-of-way line of the New York Central Railroad; thence South 84°58'56" East along said Southerly right-of-way line, a distance of 346.25 feet (rec. 345.86 feet) to a point on the West right-of-way line of Main Street; thence South 00°36'48" East along said West right-of-way line, a distance of 99.68 feet (rec. 99.50 feet); to a point on the North right-of-way line of Bronson Street; thence South 89°35'56" West along said North right-of-way line, a distance of 344.18 feet (rec. 344.60 feet) to the point of beginning. Containing 0.92 acres more or less. Subject to all legal rights-of-way, easements, and restrictions of record.

Parcel IV: A parcel located in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, and being part of Lots 16 and 17 of the recorded plat of Martin & Tutt's Addition to the Town, now City of South Bend. Being more particularly described as beginning at the Northwest corner of said Lot 16; thence North 89°35'56" East along the South right-of-way line of Bronson Street, a distance of 124.79 feet (rec. 125.00 feet); thence South 00°30'00" East, a distance of 68.40 feet (rec. 68.00 feet); thence North 89°37'11" East, a distance of 39.98 feet (rec. 40.00 feet) to the West right-of-way line of a 14.00 foot public ally; thence South 00°32'41" East along said West right-of-way line, a distance of 55.37 feet (rec. 55.00 feet); thence South 89°38'26" West, a distance of 164.86 feet (rec. 165.00 feet) to a point on the East right-of-way line of Main Street; thence North 00°28'41" West along said East right-of-way line, a distance of 123.66 feet (rec. 123.00 feet) to the point of beginning. Containing 0.41 acres more or less. Subject to all legal rights-of-way, easement, and restrictions of record.

Property Address Reference: 635 South Main Street, South Bend, IN 46614