



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 04/23/2024
FROM: Joseph Molnar
SUBJECT: Lease Agreement & Donation Agreement
YMCA

Marcia Jones

Pres/V-Pres

ATTEST: *Virvian B. Sallie* Secretary

Date: __4.25.26

APPROVED

Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

PURPOSE OF REQUEST: Separate approval of Donation Agreement and Lease Agreement with the YMCA

On March 28th 2024, the RDC approved the buyout of the former ground lease associated with Leighton Healthplex Building, giving the City full ownership interests to that building. At that time, RDC also approved a temporary lease agreement with Beacon Health System to remain in the ground floor of the building for physical therapy services and the 3, 4, 5 floors for the Beacon Health and Fitness gym. Beacon has alerted RDC staff that they will be vacating the health and fitness portion of their leased space at the end of May.

In the meantime, the YMCA and City staff had been in discussions regarding expanding the YMCA's presence in South Bend to complement the existing partnership at the O'Brien Center. Upon learning of Beacon's intent to vacate the health and fitness portion of the Leighton Healthplex Building, the City began to discuss with the YMCA the possibility of their tenancy in the building, which ultimately led to the two agreements being considered at this meeting.

The Lease Agreement being considered at this meeting contains a long-term commitment by the YMCA to occupy and operate a fitness center in the Leighton Healthplex Building. In exchange for long-term reduced rent in the space, the YMCA has agreed to donate the former YMCA on Northside Blvd. to the RDC. RDC staff believe that the former YMCA is a good redevelopment opportunity site within the River East Development Area.

The YMCA would lease the 3, 4, 5 floors of the Leighton Healthplex Building to operate a fitness center. In addition to the services currently provided by Beacon, the YMCA would eventually add child watching services in a portion of the 2nd floor of the building for parents who desire to use the YMCA's fitness services. The YMCA would pay 1/3 of the total utility costs for the building during the term of the lease,

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CITY OF SOUTH BEND | REDEVELOPMENT COMMISSION

which extends through December 31, 2032. YMCA members will have full use of both the O'Brien Center and the new downtown YMCA center as well.

Members of Beacon Health & Fitness South Bend who wish to maintain access to a downtown fitness facility will receive an exclusive invitation to join the YMCA. City staff would operate under the current MOU with the YMCA and receive discounted memberships.

Staff requests approval of both agreements.

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 DONATION AGREEMENT

This Real Estate Donation Agreement (“Agreement”) is made effective by and between the YMCA of Greater Michiana, a Michigan nonprofit corporation (the “YMCA”), with offices at 905 North Front St., Niles, MI 49120 and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, with an address of 227 W. Jefferson Boulevard, Suite 1400S, South Bend, Indiana 46601 (“Commission”) (each a “Party” and together the “Parties”).

RECITALS

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

B. YMCA owns certain real property and all improvements thereon located at 1201 Northside Blvd. in South Bend, Indiana (the “City”), and more particularly described in attached **Exhibit A** (the “Property”).

C. The Commission owns certain other property (“Commission’s Property”), which the Parties have agreed will be utilized by YMCA as a physical fitness facility through a long-term lease agreement in the form set forth in **Exhibit B** (the “Lease Agreement”), which will be executed concurrently with this Agreement.

D. YMCA desires to donate the Property to the Commission in consideration of the Commission’s commitment under the Lease Agreement to provide a long-term rent-free location for YMCA to operate its physical fitness facility and related services.

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

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

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

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

1. DONATION OF THE PROPERTY

A copy of this Agreement, signed by YMCA, constitutes YMCA’s agreement to donate and convey the Property and once signed by the Commission, constitutes the Commission’s acceptance of the donation and conveyance in accordance with the terms stated in this

Agreement. A copy signed by the Commission shall be delivered to YMCA, in care of the following representative (“YMCA’s Representative”):

Mike Kambol
VP of Finance
YMCA of Greater Michiana
905 North Front St.
Niles, Michigan 49120

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

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

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

2. LEASE AGREEMENT

The Parties expressly acknowledge that, as an inducement to donating and transferring the Property to the Commission, the Commission agrees to allow YMCA to utilize the Commission’s Property as a physical fitness facility, rent-free through December 31, 2032, under the term and conditions further set forth in the Lease Agreement attached hereto as Exhibit B.

3. COMMISSION’S DUE DILIGENCE

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

B. Authorizations During Due Diligence Period. YMCA authorizes the Commission, as of the Effective Date and continuing until the end of the Due Diligence Period (as defined below), to enter upon the Property or to cause agents to enter upon the Property for purposes of examination; provided, however, that the Commission may not

take any action upon the Property which reduces the value thereof; and further provided that the Commission shall promptly restore the Property to its condition prior to entry, and agrees to defend, indemnify, and hold YMCA 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 YMCA, including without limitation, reasonable attorney fees and costs arising from acts or omissions of the Commission or the Commission's agents or representatives.

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

D. Termination of Agreement. If at any time within the Due Diligence Period, the Commission determines, in its sole discretion, not to proceed with the purchase of the Property, the Commission may terminate this Agreement by written notice to YMCA and with no liability to the Commission, except as set forth herein. However, if such event occurs, the Commission and YMCA shall still be bound by the terms set forth in the Lease Agreement.

4. PRESERVATION OF TITLE AND CONDITION

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

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

5. TITLE COMMITMENT AND SURVEY

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

(1) Agree to insure good, marketable and indefeasible fee simple title to the Property in the name of the Commission for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed from YMCA to the Commission.

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

Regardless of whether this transaction closes, the Commission shall be responsible for the title search charges, the cost of the Title Commitment and owner's policy as well as any endorsements thereto. Within thirty (30) days after the Commission's receipt of the Title Commitment, the Commission shall give YMCA written notice of any objections to the Title Commitment. Within thirty (30) days after the Commission's receipt of the Survey, the Commission shall give YMCA written notice of any objections to the Survey. Any exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a "Permitted Encumbrance." If YMCA is unable or unwilling to correct the Commission's title and survey objections within the Due Diligence Period, the Commission may terminate this Agreement by written notice to YMCA prior to expiration of the Due Diligence Period. If the Commission fails to so terminate this Agreement, then such objections shall constitute "Permitted Encumbrances" as of the expiration of the Due Diligence Period, and the Commission shall acquire the Property without any effect being given to such title and survey objections.

6. YMCA'S REPRESENTATIONS AND WARRANTIES

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

7. CLOSING

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

B. Closing Procedure.

(1) At Closing, subject to the performance by the Commission of its obligations under this Agreement, including but not limited to execution and delivery of the Lease Agreement, YMCA shall deliver the special warranty deed, substantially in the form attached hereto as **Exhibit C**, conveying the Property to the Commission, subject only to Permitted Encumbrances, and the Title Company's delivery of the Title Commitment to the Commission in accordance with Section 5 above.

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

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

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

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

8. ACCEPTANCE OF PROPERTY "AS-IS"

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

9. TAXES

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

10. COMMISSIONS

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

11. INTERPRETATION; APPLICABLE LAW; JURISDICTION

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

12. NOTICES

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to YMCA in care of YMCA's Representative, or to the Commission in care of the Commission's Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn: Corporation Counsel) at the respective addresses stated in Section 1 above. Either Party may, by written notice, modify the address for future notices to such Party.

13. 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.

14. DISPUTE RESOLUTION; WAIVER OF JURY TRIAL

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

15. INDEMNITY

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

16. 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.

17. 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.

18. 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.

19. TIME

Time is of the essence of this Agreement.

20. ENTIRE AGREEMENT

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

21. BINDING EFFECT; COUNTERPARTS; SIGNATURES

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

22. AUTHORITY TO EXECUTE; EXISTENCE

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

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the 25 day of April 2024.

COMMISSION:

South Bend Redevelopment
Commission

By: 

Marcia I. Jones, President

ATTEST:

By: 

Vivian Sallie, Secretary

YMCA:

YMCA of Greater Michiana

By: 

Mark Weber, Chief Executive Officer

EXHIBIT A

Description of Property

Commonly Known: Louise St.

Parcel ID: 018-6014-031805

State ID: 71-09-18-103-012.000-026

Legal Description: PARCEL OF LAND BET RUSKIN & NO SIDE BLVD W OF LOUISE ST CONT 91 AC MORE OR LESS SEC 18-37-3E

Commonly Known: 1201 NORTHSIDE BLVD

Parcel ID: 018-6014-0318

State ID: 71-09-18-103-011.000-026

Legal Description: 1 Ac W Side Louise St Bet Ruskin St & No Side Blvd Sec 18-37-3e

Commonly Known: Louise St.

Parcel ID: 018-6014-031807

State ID: 71-09-18-103-010.000-026

Legal Description: PARCEL OF LAND BET RUSKIN & NO SID BLVD 18-37-3E

Commonly Known: 1005 LOUISE ST

Parcel ID: 018-6014-031804

State ID: 71-09-18-103-009.000-026

Legal Description: .43 AC SW COR SEC 18-37-3E

Commonly Known: 18 LOUISE ST

Parcel ID: 018-6014-031801

State ID: 71-09-18-103-008.000-026

Legal Description: .63 AC SW COR SEC 18-37-3E

Commonly Known: 18 Louise St.

Parcel ID: 018-6014-031803

State ID: 71-09-18-103-007.000-026

Legal Description: 1.91 AC BET CENTER LINE OF RUSKIN & NO SIDE BLVD W OF LOUISE ST SEC 18-37-3E EX PT SOLD

Commonly Known: 947 LOUISE ST

Parcel ID: 018-6014-031808

State ID: 71-09-18-103-003.000-026

Legal Description: Beg 407.74'S Of Sw Cor Of Louise St & Mish Ave Sec 18-37-3e Cont 1.37 Ac

Commonly Known: 1201 NORTH SIDE

Parcel ID: 018-6014-031802

State ID: 71-09-18-103-004.000-026

Legal Description: 18-37-3E EX PTS SOLD 2.52 AC N W QUARTER 1.15 AC

EXHIBIT B

Lease Agreement

EXHIBIT C

Form of Special Warranty Deed

AUDITOR'S RECORD
TRANSFER NO. _____
TAXING UNIT _____
DATE _____
KEY NO. See Attachment

SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that YMCA of Greater Michiana (the "Grantor")

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

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

See Attached Exhibit 1

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

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

Signature Page Follows

GRANTOR:

YMCA of Greater Michiana

By: _____
Mark Weber, Chief Executive Officer

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Mark Weber, known to me to be the Chief Executive Officer of YMCA Greater Michiana and acknowledged the execution of the foregoing Special Warranty Deed as their true act and deed.

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

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

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

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

EXHIBIT 1

Description of Property

Commonly Known: Louise St.

Parcel ID: 018-6014-031805

State ID: 71-09-18-103-012.000-026

Legal Description: PARCEL OF LAND BET RUSKIN & NO SIDE BLVD W OF LOUISE ST CONT 91 AC MORE OR LESS SEC 18-37-3E

Commonly Known: 1201 NORTHSIDE BLVD

Parcel ID: 018-6014-0318

State ID: 71-09-18-103-011.000-026

Legal Description: 1 Ac W Side Louise St Bet Ruskin St & No Side Blvd Sec 18-37-3e

Commonly Known: Louise St.

Parcel ID: 018-6014-031807

State ID: 71-09-18-103-010.000-026

Legal Description: PARCEL OF LAND BET RUSKIN & NO SID BLVD 18-37-3E

Commonly Known: 1005 LOUISE ST

Parcel ID: 018-6014-031804

State ID: 71-09-18-103-009.000-026

Legal Description: .43 AC SW COR SEC 18-37-3E

Commonly Known: 18 LOUISE ST

Parcel ID: 018-6014-031801

State ID: 71-09-18-103-008.000-026

Legal Description: .63 AC SW COR SEC 18-37-3E

Commonly Known: 18 Louise St.

Parcel ID: 018-6014-031803

State ID: 71-09-18-103-007.000-026

Legal Description: 1.91 AC BET CENTER LINE OF RUSKIN & NO SIDE BLVD W OF LOUISE ST SEC 18-37-3E EX PT SOLD

Commonly Known: 947 LOUISE ST

Parcel ID: 018-6014-031808

State ID: 71-09-18-103-003.000-026

Legal Description: Beg 407.74'S Of Sw Cor Of Louise St & Mish Ave Sec 18-37-3e Cont 1.37 Ac

Commonly Known: 1201 NORTH SIDE

Parcel ID: 018-6014-031802

State ID: 71-09-18-103-004.000-026

Legal Description: 18-37-3E EX PTS SOLD 2.52 AC N W QUARTER 1.15 AC

EXHIBIT 2

Permitted Encumbrances

LEASE AGREEMENT

This Lease Agreement (“Lease”) or (“Agreement”) is made effective as of April 25, 2024 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Landlord”), and the YMCA of Greater Michiana, a Michigan nonprofit corporation (the “Tenant”), with offices at 905 North Front St., Niles, MI 49120 (each a “Party,” and together, the “Parties”).

RECITALS

A. Landlord owns certain real property and improvements located in South Bend, Indiana, commonly known as parcel number 71-08-12-153-003.000-026 and more particularly described in the description attached Exhibit 1 (the “Property”).

B. The Parties desire that Tenant occupies and uses a portion of the existing space in the Property for the purposes of operating a health and fitness facility and related services, under the terms and conditions more particularly set forth herein.

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

1. Leased Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord a portion of the 2nd Floor of the Property, comprising approximately two thousand (2,000) square feet in size, and all of the 3rd, 4th, and 5th Floors of the Property, as further depicted in the attached Exhibit 2 (the “Leased Premises”). Landlord shall also reserve a minimum of fifteen (15) parking spaces, which shall be increased up to a total of twenty-five (25) spaces if requested in writing by Tenant, inside the parking garage attached to the Leased Premises. Landlord reserves the right to perform maintenance and improvements to the Property to modify, increase, or decrease the location, dimension, size, and height of improvements in the Property at its sole discretion, after consultation with Tenant.

2. Lease Term. The term of this Lease shall begin on June 1, 2024 and end no later than December 31, 2032 (the “Lease Term”), subject to the Termination and Surrender and Holdover provisions set forth herein. The Parties agree that on or before December 31, 2029, Landlord shall begin negotiations with Tenant regarding potential terms and conditions for future lease terms, which would take effect after that of the Lease Term specified herein.

3. Rent. The Parties acknowledge and agree that concurrently with the execution of this Agreement, Landlord and Tenant shall enter into or cause the execution of a certain Real Estate Donation Agreement (“Donation Agreement”) for the transfer of Tenant’s property located at 1201 Northside Blvd., South Bend Indiana to Landlord. In consideration of the terms and conditions set forth in the Donation Agreement, and the terms and conditions set forth in this Agreement, Tenant shall not be required to pay to Landlord any monthly rent during the Lease Term.

4. Utility Expenses. Tenant covenants and agrees to pay one third (1/3) of all existing utility expenses associated with operating the Property during the Lease Term, including, but not

limited to, expenses stemming from the Property's electricity, water, and gas utility accounts (collectively, the "Utility Expenses"). On or before January 31, 2025, Landlord will provide copies of invoices for all Utility Expenses incurred during the Lease Term for the year 2024 to Tenant. On or before February 28, 2025, Tenant shall pay to Landlord one third (1/3) of the sum of all Utility Expenses presented. Thereafter, for the remainder of the Lease Term, Landlord will provide copies of invoices for all Utility Expenses incurred during the previous twelve (12) months of operation to Tenant on an annual basis, which will be delivered to Tenant on or before January 31st of each year, and Tenant shall pay one third (1/3) of the sum of all utility invoices presented to Tenant to Landlord on or before February 28th of each year until Tenant's portion of all Utility Expenses incurred during the Lease Term have been reimbursed. Tenant shall also pay all other routine costs of building maintenance and daily operations incurred by Tenant during the Lease Term for the space Tenant occupies as further described in Section 10 of this Lease.

In the event the Utility Expenses are not paid in full by Tenant on or before February 28th of the year it becomes due, Tenant shall also pay Landlord a late charge, which shall be equal to \$25.00 per day for each day payment of Utility Expenses is late, with a fifteen (15) day grace period before late fees are charged.

5. Quiet Enjoyment. Landlord warrants that it is the owner in fee simple of the Property, and that it has full right and authority to enter into this Lease, subject to all easements, restrictions, liens, encumbrances, rights-of-way and other matters of record. Landlord agrees that if Tenant observes all of the terms and conditions of, and performs all of its obligations under, this Lease, then, at all times during the Term, subject to the terms and conditions of this Lease, Tenant shall have the peaceful and quiet enjoyment of possession of the Leased Premises, without any manner of hindrance from parties claiming under, by, or through Landlord, except as otherwise set forth in Section 1 of this Lease and as communicated to Tenant.

6. Use. The Leased Premises shall be primarily used and occupied as a health and fitness center, with babysitting services also offered on the Leased Premises to patrons utilizing Tenant's services (the "Use"), and all other work performed by employees of Tenant in the ordinary course of their duties on behalf of, associated with, and/or affiliated with Tenant and consistent with Tenant's Use of the Leased Premises. The Leased Premises may not be used for any other purpose inconsistent with Tenant's Use without the prior written approval of the Landlord.

7. City Employee Membership. Tenant has an existing Memorandum of Understanding with the City of South Bend Board of Park Commissioners regarding reciprocal member benefits, attached in Exhibit 3 (the "MOU"). Tenant shall provide the same terms for City of South Bend employees to have access to the health and fitness center located at the Leased Premises as is provided within the MOU. If the MOU is terminated at a future date, the Parties shall promptly negotiate in good faith to reach a new agreement regarding the continued use of Tenant's health and fitness center at the Leased Premises by City of South Bend employees.

8. Landlord Maintenance and Repairs. Landlord agrees to maintain the Leased Premises in a condition of safety and habitability appropriate to the Use of the Leased Premises

and consistent with its condition on the Effective Date at all times during the Lease Term. Landlord shall, at its expense: (a) keep the building and its foundations, structure, floors, ceilings, utility infrastructure, and roof of the Property in good order, repair and condition; and (b) maintain the exterior walls of the Property in a structurally sound condition, except to the extent that there is damage caused by any act or omission of Tenant or its employees, agents, contractors, invitees or licensees, and (c) replace window glass that may be damaged or broken, except to the extent that any damage or breakage is caused by any act or omission of Tenant or its employees, agents, contractors, invitees or licensees. Landlord shall be responsible for the alteration, renovation, repairs, replacement and maintenance of all gas, water, electricity, heating, ventilating, and cooling equipment and systems serving the Property (the "Utility Systems"); provided, however, that Landlord may bill Tenant for any repairs or replacement if Landlord's consultant determines with reasonable certainty that the need to repair or replace the Utility Systems was solely and as a direct result of Tenant's misuse thereof or Tenant's failure to notify the Landlord of any malfunctioning. Except as provided in this Section 8, Landlord shall not be obligated to make construction, reconstruction, alterations, renovations, maintenance, repairs, replacements, or improvements of any kind to or for the Property, or any fixtures or equipment contained therein.

9. Tenant Maintenance and Repairs. Tenant shall have access to the portions of the 2nd floor that contain pool mechanicals and is responsible for maintenance of the pool mechanicals while Tenant continues to lease portions of the 2nd floor, and all of the 3rd, 4th, and 5th floors of the building for the Use. Except for construction, reconstruction, alterations, renovations, maintenance, or repairs to be performed by Landlord pursuant to Section 8, for the Leased Premises, Tenant shall: (a) keep the Leased Premises clean, neat, sanitary, safe, and in good order, repair and condition, and Tenant shall make all minor, routine maintenance, routine repairs, or routine replacements to the Leased Premises and shall provide routine janitorial services at Tenant's sole expense; (b) keep all glass in windows, doors, fixtures, and other locations clean and in good order, repair, and condition, and replace interior light bulbs or fluorescent lights as needed. The Tenant shall be responsible for notifying the Landlord of any visible, known damage to, malfunctioning of, or apparent repairs necessary to be made to the Utility Systems used by Tenant in the Property. Said improvements shall be agreed to without amending this Lease and performed by Landlord with Tenant reimbursing Landlord after completion and approval of the improvements.

10. Hazardous Substances. With the exception of chemicals typically used for the maintenance of swimming pools, the Tenant shall not knowingly cause or permit the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any hazardous substances, as that term is defined under any present or future federal, state, or municipal law, ordinance, rule or regulation applicable to the environmental condition of the Property ("Hazardous Substances"). Should the Landlord knowingly require the use or storage of any Hazardous Substances for any purpose allowed herein, except as otherwise noted, Landlord shall provide prior written notice to Tenant of Landlord's intended use or storage of such Hazardous Substances and the purpose thereof, and Landlord shall indemnify, defend, and hold harmless Tenant from any and all loss, costs (including reasonable attorney's fees), damages, and liability on account of Landlord's use or storage of such Hazardous Substance on the Property. Tenant may

continue to store substances for maintenance of the pool facilities while this Lease remains active, but upon Landlord's request Tenant must remove any remaining Hazardous Substances used by Tenant for maintenance of the pool facilities upon termination of the Lease.

11. Utility Services. At all times, Landlord shall provide the equipment, products, goods, services, materials, and supplies needed for proper operation of the HVAC System as of the Effective Date and through the Lease Term.

12. Loss of Use. In the event the Leased Premises are made untenable or are partially destroyed by weather, Act of God, act of nature, water, gas, fire, explosion, or other casualty, provided such total or partial destruction is not caused by Tenant, (a) the Leased Premises shall be repaired as speedily as possible, at Landlord's sole discretion and expense; and (b) in the event the repairs are not completed, or cannot reasonably be completed, within ninety (90) days, Tenant may elect to terminate this Lease by notifying the Landlord in writing within thirty (30) days of the casualty.

13. Tenant Abandonment. Tenant understands and agrees if it abandons the Leased Premises during the Lease Term, Tenant shall not be relieved of its duties and obligations under this Lease before the date of abandonment. Exercise of Tenant's rights under the Compliance or Termination provisions shall not constitute abandonment.

14. Force Majeure. With the exception of the payment of Utility Expenses, in the event that either Party is unable to perform any of its obligations under this Lease, or to enjoy any of its benefits, because of pandemic; epidemic; water, gas, fire, explosion, or other casualty; natural disaster; or decrees of governmental bodies not the fault of the affected Party ("Force Majeure Event"), the Party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations of the affected Party under this Lease shall be immediately suspended until the affected Party is able to resume performance.

15. Tenant's Liability Insurance. Tenant, at its sole expense, shall maintain during the Lease Term and any holdover period, commercial general liability insurance on the Leased Premises covering Tenant as the named insured and identifying Landlord as an "additional insured" with terms satisfactory to Landlord and with companies qualified to do business in the State of Indiana, for limits of not less than \$1,000,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) occurrence, \$200,000.00 property damage insurance, or a combined single limit in the amount of \$4,000,000.00. Landlord will continue to maintain during the Lease Term and any holdover period the types and amounts of coverage it had as of the Effective Date.

16. Coverage Verification. All policies of insurance required by this Lease to be maintained by Tenant shall be in a form, and maintained with an insurer, reasonably satisfactory to Landlord, and Tenant shall provide written notice to Landlord at least thirty (30) days in advance of the cancellation, termination, or change of or to any such policy. Additionally, Tenant shall cause Landlord to receive certificates of such insurance, duly executed by the insurance company or the general agency writing such policies, and effective not later than the Effective Date. Tenant

shall cause Landlord to receive appropriate renewal or replacement certificates not less than ten (10) days prior to the expiration of any such policy or policies. Tenant shall also furnish Landlord with certificates evidencing such coverages from time to time upon Landlord's request. If Tenant shall fail to timely procure or renew any of the insurance required under this Lease, Landlord may obtain replacement coverage and the cost of same shall be payable by Tenant upon receipt of written demand by Landlord.

17. Assignment and Sublease. Tenant shall not assign this Lease or sublet the Leased Premises. Notwithstanding anything to the contrary contained herein, Tenant shall be liable for the acts and omissions of any third party allowed by Tenant to use any portion of the Property.

18. Indemnification. To the extent allowed by law and subject to the limits of Indiana's Tort Immunity Statute, Tenant shall indemnify, defend, and hold harmless Landlord from any and all loss, costs (including reasonable attorney's fees), and liability on account of any damages, injuries, claims, and demands to the extent caused by negligent errors, omissions, or misconduct of Tenant, its agents, invitees, or employees but only to the extent that same are caused by the negligence, misconduct, or other fault of Tenant, its agents, invitees, or employees.

19. Termination. In the event that either Party breaches any material covenant or obligation in this Lease, including the nonpayment of Tenant's portions of the Utility Expenses and any late fees assessed, the non-breaching Party shall give the breaching party written notice of any intent to terminate this lease for such breach. If the breaching Party does not correct the breach specified within thirty (30) days (or, in the event the breach is of a nature that cannot be reasonably remedied within thirty (30) days, fails to commence to remedy such breach within thirty (30) days and continue with reasonable diligence to correct same) this Lease may then be terminated by thirty (30) days' written notice by the non-breaching Party to the breaching Party for such uncured cause. Upon cancellation or termination of this Lease, Tenant shall be released from any further obligation under the terms of this Lease arising after the date of such termination. If the Lease is cancelled or terminated due to an uncured material breaches by Tenant, Tenant must vacate the Leased Premises within ten (10) business days. In the event this Lease is terminated as a result of Landlord's material breach, Landlord shall reimburse Tenant for the actual cost of the Tenant's physical improvements made to the Leased Premises during the Lease Term, documented by sufficient invoices or receipts.

20. Surrender and Holdover. Upon the termination of this Lease by lapse of time or otherwise, Tenant agrees that it will surrender and deliver to Landlord possession of the Leased Premises in substantially the same condition as on the first day of the Lease Term, ordinary wear and tear excepted. Tenant shall remove all of Tenant's personal property prior to such surrender and delivery. Any personal property not removed by Tenant within ten (10) business days of Landlord's written demand will be deemed abandoned and Landlord may, after a 2nd written notice allowing one (1) business day, dispose of such personal property as allowed under Ind. Code § 5-22-22. In the event that Tenant does not vacate the Leased Premises upon the termination of this Lease, Tenant shall pay Landlord a delay fee in the amount of Fifty Dollars (\$50.00) per day. This Section shall survive the termination of this Lease.

21. Notices. Any notices or communications required or requested to be given under the terms of this Lease shall be deemed properly given if mailed by United States mail, registered and with postage prepaid, to:

To Landlord at:

Executive Director of Community Investment
Department of Community Investment
City of South Bend
227 W. Jefferson Blvd., 1400S
South Bend, Indiana 46601

With a copy to:

Corporation Counsel
Department of Law
City of South Bend
227 W. Jefferson Blvd., 1200S
South Bend, Indiana 46601

To Tenant at:

Chief Executive Officer
YMCA of Greater Michiana
905 North Front St.
Niles, Michigan 49120

With a copy to:

Mowitt S. Drew, III Esq.
Butzel Long, P.C.
12 Longmeadow Village Drive, Suite 100
Niles Michigan 49120

Addresses for notices may be changed by delivery notice of such change in the manner provided above.

22. Brokers. Landlord and Tenant each represent and warrant that they have not obligated the other to compensate any real estate agent, broker or finder or their intermediary in connection with the negotiation, preparation, or execution of this Lease.

23. Severability. If any provisions of this Lease shall be invalid or unenforceable, the remainder hereof shall nevertheless continue in full force and effect.

24. 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.

25. Counterparts; Signatures. This Agreement may be separately executed in counterparts by the Parties, and the same, when taken together, will be regarded as one original Agreement. Electronically transmitted signatures will be regarded as original signatures.

26. Authority. Each undersigned person signing on behalf of their respective Party certifies that they are duly authorized to bind their respective Party to the terms of this Agreement.

27. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Indiana. Any dispute arising hereunder shall be heard in the state courts located in St. Joseph County.

28. Entire Agreement. The Lease contains the entire agreement and understanding between the Parties hereto and may not be amended or changed except by agreement in writing executed by the Parties.

29. Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of the Parties hereto, their respective successors and assigns.

30. Compliance. The Parties shall comply with all federal, state and local laws and ordinances, lawful orders, and regulations affecting the Property, and the health, cleanliness, safety, construction, occupancy and use of same, in effect from time to time. Further, the Parties covenant and agree to make a good faith effort to provide and maintain a drug-free workplace at the Property. Tenant and Landlord shall give written notice to the other within one (1) business day after receiving actual notice that any employee of Tenant or Landlord has been convicted of a criminal drug violation occurring at the Property. Additionally, the Tenant shall comply with all applicable laws and regulations in their hiring and employment practices and policies for any activity occurring at the Property and covered by this Lease. The Tenant shall also comply with all federal, state, and municipal laws, regulations, and standards applicable to their activities pursuant to this Lease including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Tenant certifies that, to the best of its knowledge, it is in compliance with each such provision and shall remain in compliance through the term of this Lease. The Tenant certifies by entering into this Lease neither it nor its respective executives are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Lease by any federal agency or by any department, agency or political subdivision within the United States.

31. Memorandum of Lease. Upon written request by Tenant, a Memorandum of Lease in recordable form shall be executed by both Parties and recorded in conformance with the laws of the State of Indiana at Tenant's sole cost and expense.

Signature Page Follows

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year written below.

“LANDLORD”

SOUTH BEND REDEVELOPMENT COMMISSION



Marcia I. Jones, President

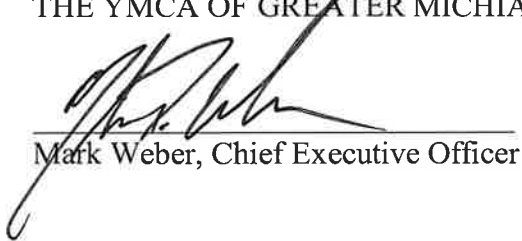
ATTEST:



Vivian Sallie, Secretary

“TENANT”

THE YMCA OF GREATER MICHIANA



Mark Weber, Chief Executive Officer

Date: _____

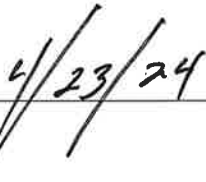


EXHIBIT 1

Description of Property

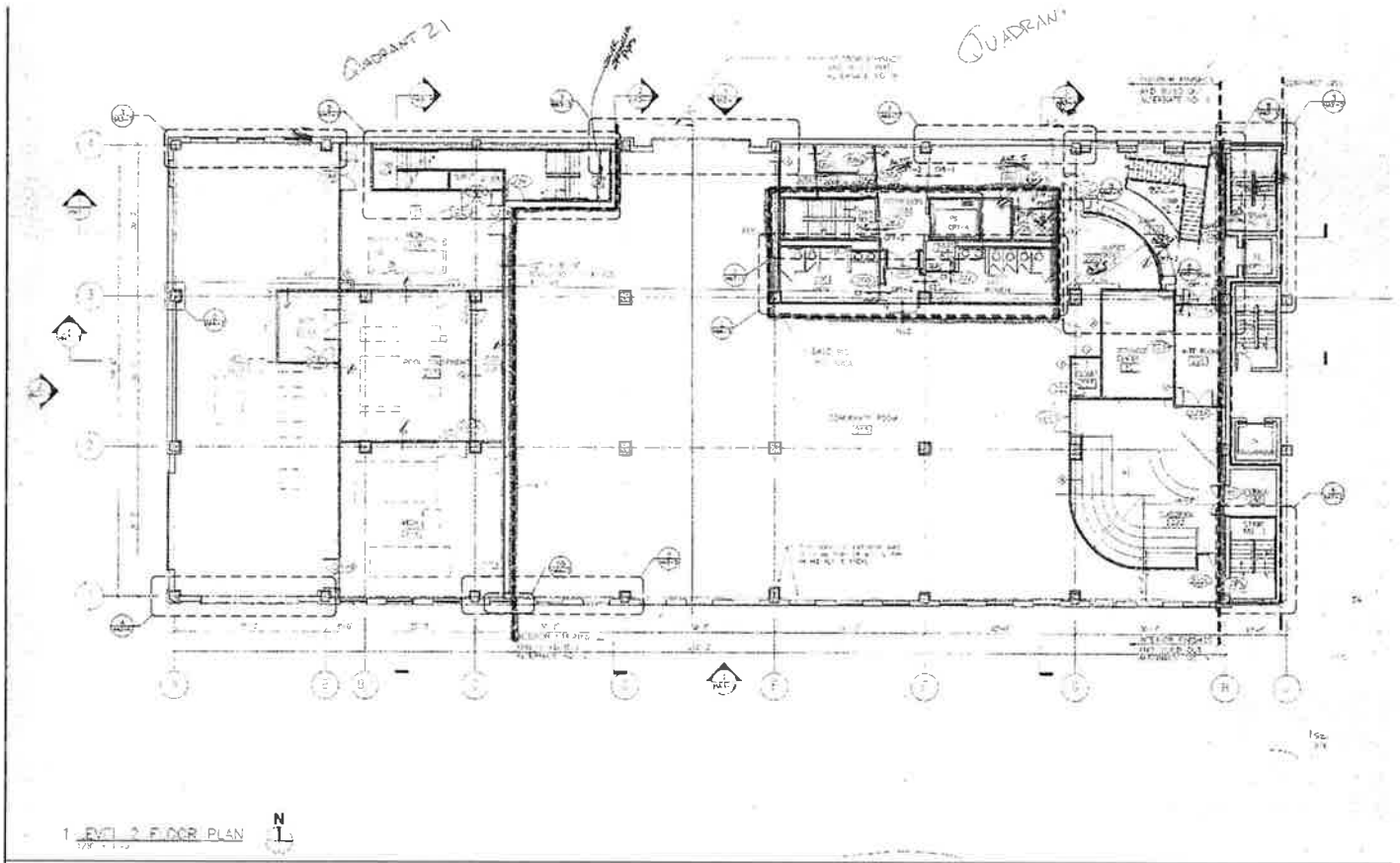
Portions (as described herein) of Lot 1 as shown on the recorded plat of Leighton Plaza First Minor Subdivision recorded on February 23, 2017, as Document No. 1704410 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 018-3006-0190; State Parcel ID: 71-08-12-153-003.000-026]

Commonly Known As: 111 W. Jefferson Blvd., South Bend, Indiana 46601 (Fitness Center and Office Space) and 130 S. Main St., South Bend, Indiana 46601 (Parking Garage).

EXHIBIT 2

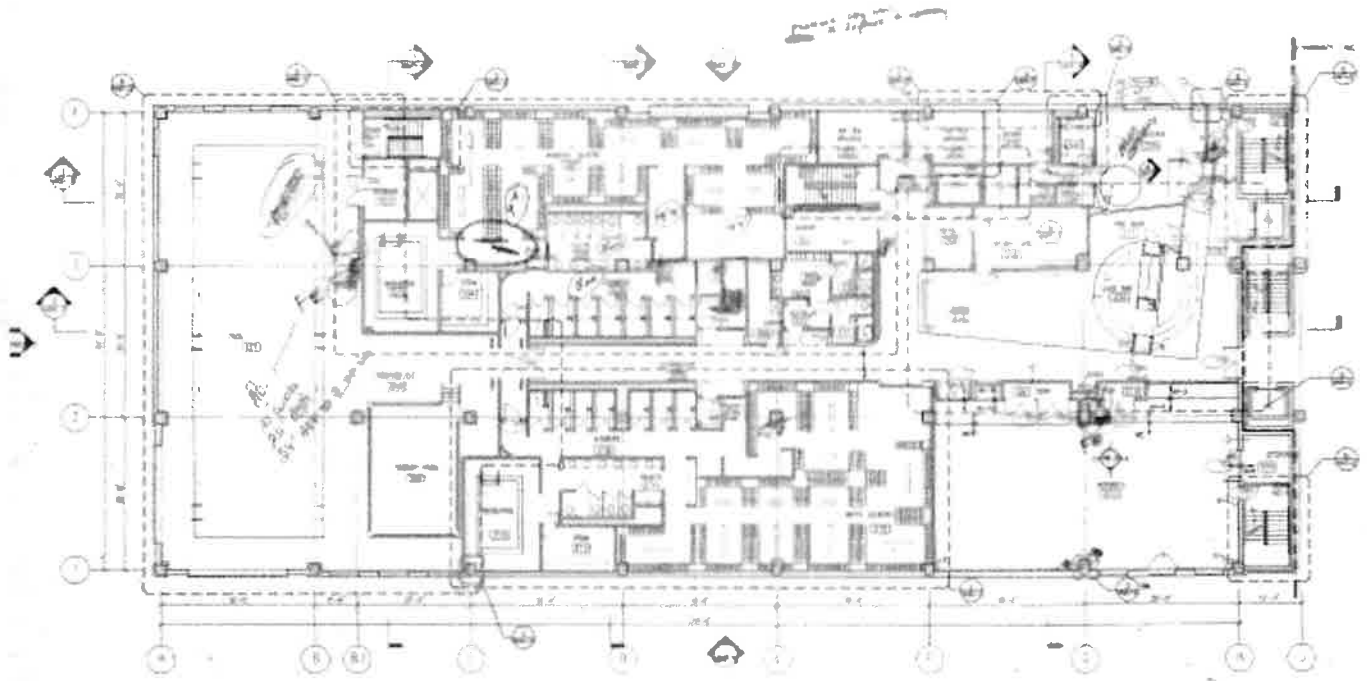
Floor Plans

Second (2nd) Floor



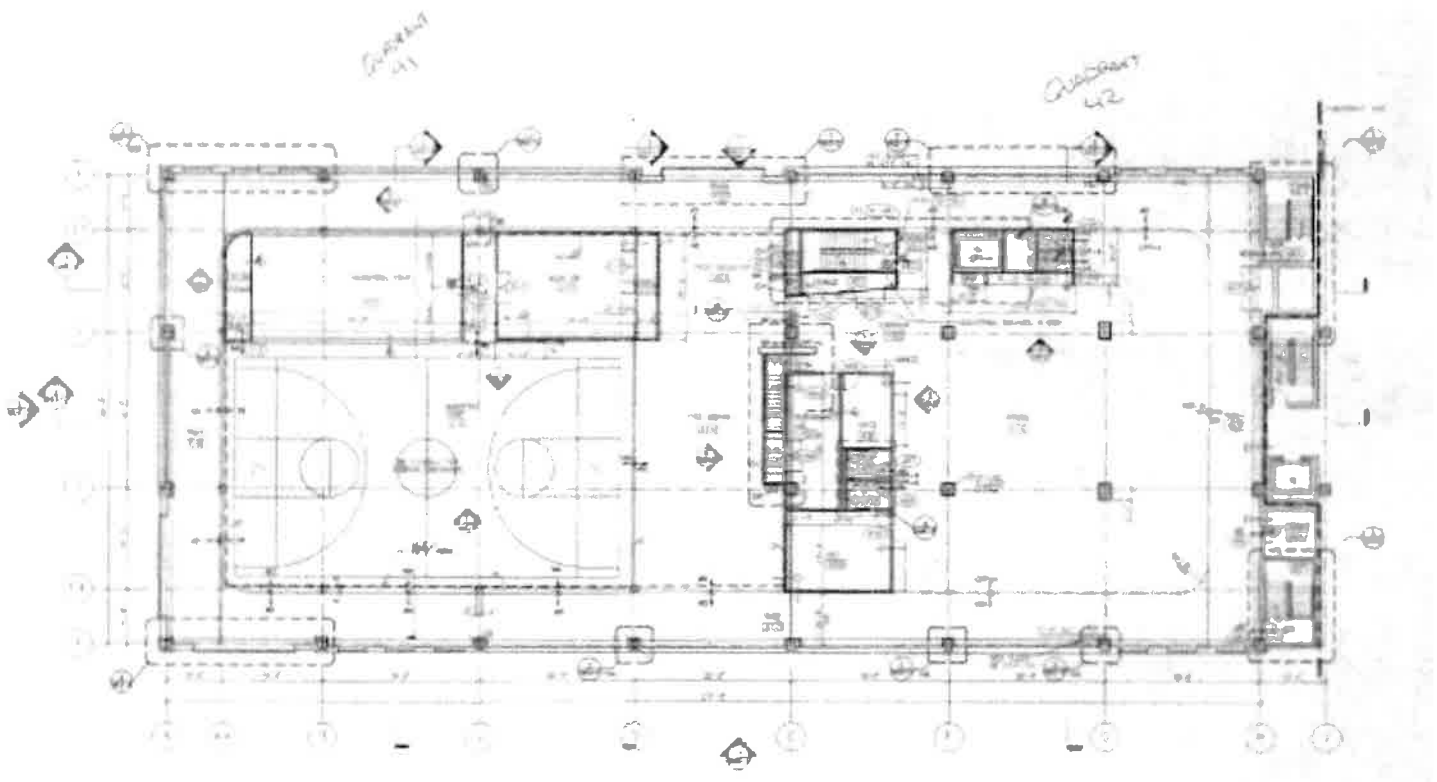
Tenant shall lease from Landlord a portion of this second floor, which equals approximately two thousand (2,000) square feet in total size, with the exact location of the leased portion to be mutually agreed upon by the Landlord and Tenant in writing. All remaining portions of this floor not leased to Tenant shall be reserved for Landlord's use.

Third (3rd) Floor



LEVEL 3 FLOOR PLAN 

Fourth (4th) Floor



4th Floor Plan

Fifth (5th) Floor

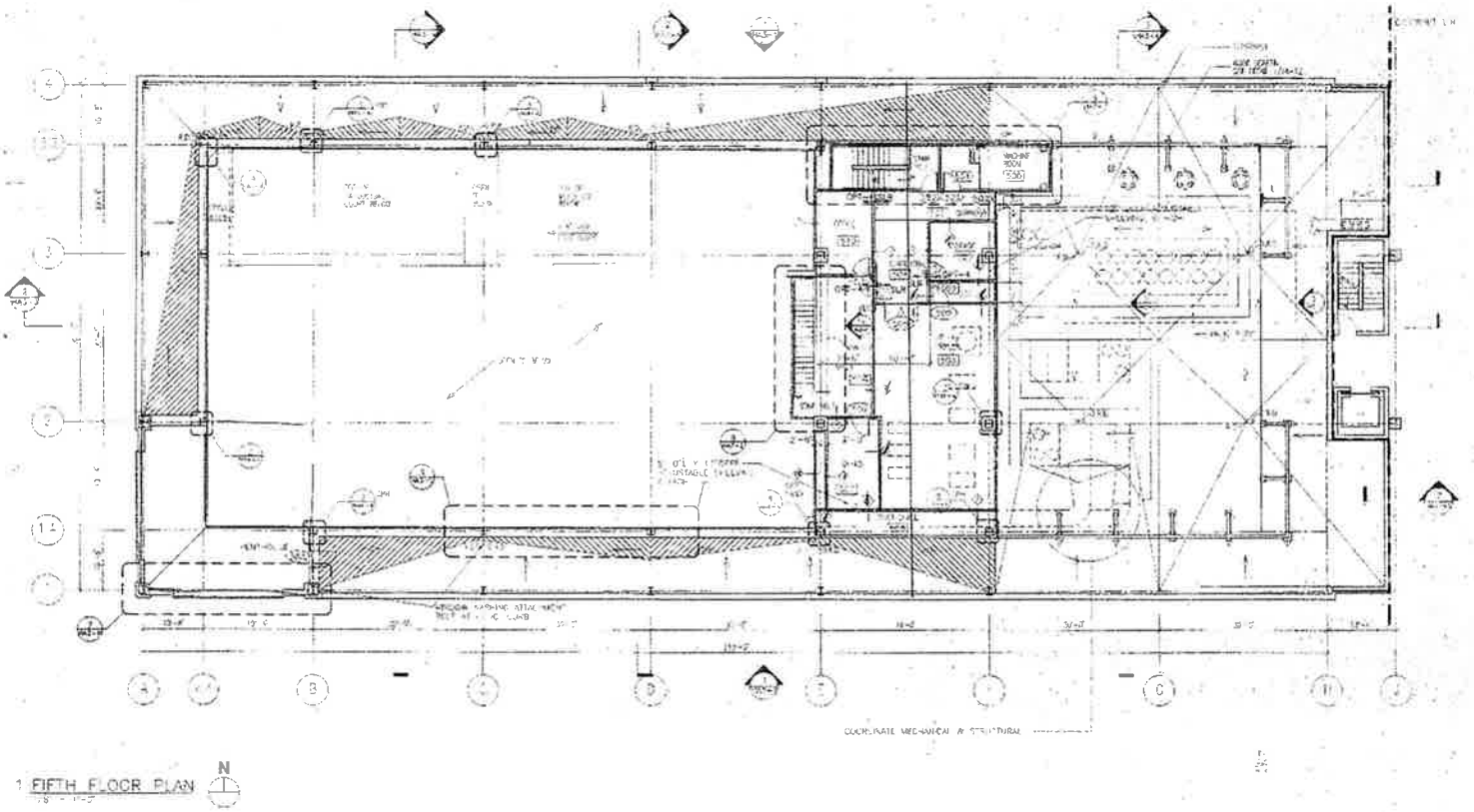


EXHIBIT 3

Memorandum of Understanding