



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 2/3/23
FROM: Joseph Molnar
SUBJECT: Authorizing Staff Execute Option

_____ Pres/V-Pres

ATTEST: _____ Secretary

Date: _____

APPROVED Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

PURPOSE OF REQUEST: Resolution Authorizing Execution of Option to Purchase Agreement

Specifics: On April 13, 2022 the RDC entered into an Option to Purchase Agreement regarding the Claeys Factory building in Downtown South Bend. Claeys Candy has notified City staff that they are ready to sell the building and fully move to their new factory.

The attached resolution allows Staff to execute the final agreement and all necessary paperwork for the purchase of the building along the terms of the previously approved Option to Purchase Agreement.

Staff recommends approval of the resolution.

INTERNAL USE ONLY: Project Code: _____;

Total Amount new/change (inc/dec) in budget: _____; Break down:

Costs: Engineering Amt: _____; Other Prof Serv Amt _____;

Acquisition of Land/Bldg (circle one) Amt: _____; Street Const Amt _____;

Building Imp Amt _____; Sewers Amt _____; Other (specify) Amt: _____

_____ Going to BPW for Contracting? Y/N

Is this item ready to encumber now? ____ Existing PO# _____ Inc/Dec \$ _____

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

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

RESOLUTION NO. 3571

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
AUTHORIZING EXECUTION OF AGREEMENT**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”), governing body of the South Bend Department of Redevelopment (“Redevelopment”), exists and operates pursuant to I.C. 36-7-14; and

WHEREAS, the Commission entered into a Option to Purchase Agreement (“Agreement”), dated April 13, 2022, with Gregg Claeys (“Claeys”) and Michael D. Machalleck (“Machalleck”) each an individual (together, Claeys and Machalleck are referred to as the “Developer”) for the option to purchase certain property (“Property”), a copy of which is attached as Exhibit A; and

WHEREAS, as a part of the Agreement, the Commission have an exclusive option to purchase the Property; and

WHEREAS, the Commission wishes to exercise their option.

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The Commission hereby ratifies and approves the acquisition of the Property at the agreed upon purchase price of Five Hundred and Fifty Thousand Dollars (\$550,000.00).
2. The Commission authorizes members of the Department of Law and Department of Community Investment to negotiate the remaining terms of the agreement on its behalf.
3. The Corporation Counsel of the City of South Bend, Indiana is hereby authorized and instructed to execute the final agreement.
4. This Resolution will be in full force and effect upon its adoption by the Commission.

Signature Page Follows

ADOPTED at a meeting of the South Bend Redevelopment Commission held on February 9, 2023.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia Jones, President

ATTEST:

Vivian Sallie, Secretary

EXHIBIT A

Option to Purchase Agreement

OPTION TO PURCHASE AGREEMENT

THIS EXCLUSIVE OPTION TO PURCHASE AGREEMENT (the "Option Agreement") is made and entered into by and between the South Bend Redevelopment Commission, governing body of the South Bend Department of Redevelopment ("Commission"), and Gregg Claeys ("Claeys") and Michael D. Machalleck ("Machalleck"), each an individual (together, Claeys and Machalleck are referred to as the "Developer") (the Commission and the Developer are each sometimes referred to herein as a "Party" or collectively as the "Parties").

PRELIMINARY STATEMENT

Developer is the owner of certain real estate, as more particularly described in **Exhibits A and B** to this Option Agreement (the "Real Estate"). GFC Holdings LLC and Claeys Candy, Inc. have entered into a certain Development Agreement dated concurrently herewith relating to the Developer's construction of a new facility within the City of South Bend and the Commission's contribution to the construction of a gas utility main pipeline (the "Development Agreement"). Pursuant to the Development Agreement, Developer agrees to grant to the Commission an exclusive option to purchase the Real Estate and, in the event of exercise of said option, Developer agrees to sell the Real Estate to the Commission, upon the terms and conditions hereinafter set forth. Unless otherwise specified herein, all capitalized terms have the meaning set forth in the Development Agreement.

In consideration of the mutual promises contained in this Option Agreement, the Parties agree to the following:

AGREEMENT

1. **Exclusive Option to Purchase.** The Developer hereby grants the Commission the exclusive option to purchase the Real Estate, subject to the terms and conditions set forth herein (the "Option"). The Option must be exercised by Commission, if at all, no later than the expiration of the Option Period, which is herein defined as two (2) years from the date hereof (the "Option Period"). As consideration for this Option, the parties acknowledge that the Commission will pay the Funding Amount (the "Option Payment").

2. **Exercise of Option.** Commission may exercise the Option by giving notice to the Developer in writing during the Option Period in the manner provided for the giving of notices in Section 10 of this Option Agreement. The Option Payment shall be applied to the purchase price for the Real Estate.

3. **Purchase Price.** In the event of exercise, the Commission shall purchase from Developer and Developer shall sell to the Commission, the Real Estate for the purchase price of Five Hundred Fifty Thousand Dollars (\$550,000.00), minus the amount of the Option Payment \, as well as any costs typically paid by the seller at closing, including but not limited to taxes, closing costs, and transfer fees (the "Purchase Price").

4. Purchase Agreement and Closing. If the Option is exercised, the Commission and Developer will promptly negotiate the terms of a purchase agreement for the Real Estate, which shall include the Purchase Price and shall specify that the Commission shall accept the real estate comprising the parking lot, described in Exhibit B, as-is with all faults. and that all environmental remediation deemed reasonable and necessary by the Commission in its sole discretion with regard to the property on which the building is situated (including any remediation with respect to the building itself), as such property is described in Exhibit A, shall be completed by the Developer prior to closing. The Commission and its counsel shall be responsible for preparing the initial draft of the purchase agreement, which will be in a form customary for transactions of similar scope and significance to the Parties and, with the exception of the foregoing, will include customary representations, warranties, indemnities, covenants, customary conditions of closing and other customary matters. At closing, Developer shall deliver a warranty deed free and clear of all encumbrances excepting and subject to all legal highways, applicable zoning ordinances, and easements of record and real estate taxes and assessments prorated in accordance with local custom.

5. Recording of Memorandum. The Parties shall concurrently herewith execute, record and place of record a memorandum of this Option Agreement in the office of the County Recorder of St. Joseph County, Indiana.

6. Governing Law and Jurisdiction. This Option Agreement will be governed by Indiana law, without regard to principles of conflicts of law. Any dispute between the Parties shall be heard in any court of competent jurisdiction in St. Joseph County, Indiana.

7. Benefit of the Parties. This Option Agreement is made solely for the benefit of the Parties, and no one else shall acquire or have any right under (or by virtue of) this Option Agreement.

8. Binding Effect and Assignment. This Option Agreement shall be binding upon and inure to the benefit of the Parties and to their respective successors and assigns. The rights and obligations contained in this Option Agreement shall not be assigned by either Party.

9. Amendment. This Option Agreement may only be amended or modified as may be agreed upon in writing by all Parties.

10. Notices. All notices and other communications hereunder shall be in writing and shall be furnished by hand delivery or by registered or certified mail to the Parties at the addresses set forth below. Any such notice shall be duly given upon the date it is delivered to the addresses shown below, addressed as follows:

If to the Commission, to:

South Bend Redevelopment Commission
c/o Department of Community Investment
227 W. Jefferson Blvd., Suite 1400 S.
South Bend, IN 46601
Attn: Executive Director

With a copy to:

City of South Bend Department of Law
227 W. Jefferson Blvd., Suite 1200 S.
South Bend, IN 46601
Attn: Corporation Counsel

If to Developer, to:

Gregg Claeys
Michael D. Machalleck
525 S Taylor St.

South Bend, IN 46634

With a copy to:

11. Severability. If any term, provision, covenant or restriction contained in this Option Agreement that is intended to be binding and enforceable is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

12. 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.

13. 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.

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

15. Entire Agreement. The Parties acknowledge that upon final execution of this Option Agreement, all previous statements, proposals, offers and information and any oral statements or understandings are hereby rendered void, null, and of no legal consequence in

connection with the subject matter hereof and that this Option Agreement represents an expression of the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements or understandings of any kind between the Parties with respect to the subject matter hereof.

* * * * *

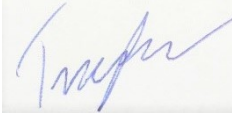
IN WITNESS WHEREOF, the parties hereto have executed this Option to Purchase Agreement on the 13 day of April 2022.

SOUTH BEND REDEVELOPMENT
COMMISSION



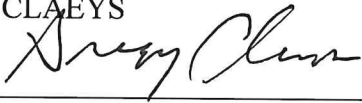
Marcia I. Jones, President

ATTEST:



Troy Warner, Secretary

GREGG CLAEYS



MICHAEL MACHALLECK

EXHIBIT A

Real Property Legal Description - Building

Parcel 1:

Lots 1 & 2 and the Vacated Alley N and Adjacent in Touhey & Hagery's Subdivision of Lot 59 Bol.

Parcel No. 018-3043-1650

Parcel 2:

Lots 3 & 4 in Touhey & Hagery's Subdivision of Lot 59 Bol.

Parcel No. 018-3043-1653

Commonly known as 525 S Taylor St., South Bend, Indiana

EXHIBIT B

Real Property Legal Description – Parking Lot

Parcel 1:

Property Address: 522 S Taylor St
South Bend, IN

Legal Description: 31'S End Lot 14 Vails Sub Blk 10

Tax Key Number: 018-3014-0512

State Parcel ID: 71-08-11-427-032.000-026

Parcel 2:

Property Address: Vacant Lot on Taylor St and South St
South Bend, IN

Legal Description: Lot 15 & 16 Ex 34 Ft E End Vails Sub Blk 10

Tax Key Number: 018-3014-0513

State Parcel ID: 71-08-11-427-011.000-026

Parcel 3:

Property Address: Vacant Lot on South St
South Bend, IN

Legal Description: 34 Ft. E End of Lots 15 & 16 Vails Sub Blk 10

Tax Key Number: 018-3014-0514

State Parcel ID: 71-08-11-427-012.000-026