



South Bend

Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

Agenda

Regular Meeting, July 13, 2023 – 9:30 a.m.

<https://tinyurl.com/RedevelopmentCommission> or BPW Conference Room 13th Floor

1. Roll Call

2. Approval of Minutes

A. Minutes of the Regular Meeting of Thursday, June 22, 2023

3. Approval of Claims

A. Claims Allowance 7.7.23

4. Old Business

A. None

5. New Business

A. River West Development Area

1. Budget Request (Coal Line Trail Phase II)

2. Real Estate Purchase Agreement (KCG)

3. Real Estate Purchase Agreement (Advantix)

4. MOU (Valerie Loew 2023 – 2028)

5. First Amendment to Real Estate Purchase Agreement (The Monreaux)

6. Progress Reports

A. Tax Abatement

B. Common Council

C. Other

7. Next Commission Meeting:

Thursday, July 27, 2023, 9:30 am



South Bend
Redevelopment Commission
 227 West Jefferson Boulevard, Room 1308, South Bend, IN

**SOUTH BEND REDEVELOPMENT COMMISSION
 SCHEDULED REGULAR MEETING**

June 22, 2023 – 9:30 am

<https://tinyurl.com/RedevelopmentCommission> or **BPW 13th Floor**

Presiding: Marcia Jones, President

The meeting was called to order at 9:36 a.m.

1. ROLL CALL

Members Present:	Marcia Jones, President – IP Vivian Sallie, Secretary - IP David Relos, Commissioner – IP Leslie Wesley, Commissioner - V	IP = In Person V = Virtual
Members Absent:	Troy Warner, Vice-President Eli Wax, Commissioner	
Legal Counsel:	Danielle Campbell, Asst. City Attorney Sandra Kennedy, Esq.	
Redevelopment Staff:	Mary Brazinsky, Board Secretary Joseph Molnar, RDC Staff	
Others Present:	Caleb Bauer Erik Glavich Tim Corcoran Chris Dressel Rosa Tomas Michael Divita Charlotte Brach Zach Hurst Leslie Biek Matt Barrett Jordan Smith Katrina Marquardt Mark Hillman	DCI DCI DCI DCI DCI DCI DCI Engineering Engineering Engineering Resident SB Tribune Hayes Tower Intern, city legal

2. Approval of Minutes

- **Approval of Minutes of the Regular Meeting of Thursday, June 8, 2023**

Upon a motion by Secretary Sallie, seconded by Commissioner Relos, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, June 8, 2023.

3. Approval of Claims

- A. Claims Allowance 6.14.23
- B. Claims Allowance 6.23.23

Upon a motion by Commissioner Relos, seconded by Secretary Sallie, the motion carried unanimously, the Commission approved the claims allowance of June 14, 2023, and June 20, 2023.

4. Old Business

5. New Business

A. River West Development Area

1. Budget Request (Coal Line Multiuse Trail Phase III Design)

Tim Corcoran Presented a Budget Request (Coal Line Multiuse Trail Phase III Design). Staff is requesting \$250k for design of Coal Line Phase III between Lincoln Way West and Linden Avenue. Continuing the trail was identified as a priority in the Kennedy Park plan and as a connection to the new Dream Center. Construction of this project could begin as early as 2025; this year we will be in the design phase. Mr. Corcoran showed the Commission a PowerPoint Presentation of progress year to date of the Coal Line Multiuse Trail.

(<https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:f247184a-c310-49eb-9ec4-af059d4501ae>). Phase I of the project is complete. Phase II is under construction. Phase III will start where Phase I was completed at Lincolnway and Wilbur. We are excited that we will be able to connect the East Bank Trail to the Coal Line Trail with the LaSalle Trail to Roseland and up to Niles Michigan. The request before you today is a budget request for design of Phase III which is an 80/20 match with Macog. The city has to pay for this upfront but will be reimbursed 80% of the \$250k paying approximately \$50k. Several renderings were shown of the areas in which the Coal Line Trail will run. Commission approval is requested.

Commissioner Wesley asked about the College and Linden Street rendering. She asked about the building being owned and a plan for technology in that building.

Mr. Corcoran and Mr. Bauer noted that those are only conceptual drawings including the King Center.

Commissioner Relos asked if we are following the old, abandoned railroad.

Mr. Corcoran responded that route has become cost prohibited. The railroad owned a portion and would have put the trail behind people's homes. The new layout puts the trail in a higher visible area which increases safety and usability; it is also a straight line to the King Center.

Upon a motion by Secretary Sallie, seconded by Commissioner Relos, the motion carried unanimously, the Commission approved Budget Request (Coal Line Multiuse Trail Phase III Design) submitted on Thursday, June 22, 2023.

2. **Resolution No. 3575 (Approving R Ray Real Estate (Masterbilt) Settlement)**
Joe Molnar Presented Resolution No. 3575 (Approving R Ray Real Estate (Masterbilt) Settlement). The Resolution will approve staff's authority to settle an agreement with R Ray Real Estate. The Redevelopment Commission sold the property in 2019 to Masterbilt with intentions of moving their business to this site. Masterbilt performed lot improvements including obtaining a Quiet Title Judgment and removing railroad easements which made the property larger for development. Masterbilt has since purchased a larger already constructed building within the city limits at 3801 Voorde Drive and expanded the business as planned. They have made large expansions to their business at Voorde Drive without tax abatements or investments from the city. Masterbilt has been very open with the city as to their plans for a new location. The city would again own all the property along Indiana which will be a large location for future development. The city has agreed to pay \$50k to reacquire the improved property which will give us ownership of the entire Ignition Park South property. We will transfer two small non-buildable lots near the current Masterbilt owned property to them. The Resolution will authorize the legal department to negotiate the remaining terms of the settlement agreement. Commission approval is requested.

Danielle Campbell Weiss, City Attorney stated that this will approve the key terms of the agreement. Corporation Counsel will authorize the key terms and any minor terms of the agreement. A deed would be executed by the RDC today but will be held until we receive the deed of the initial property.

Mr. Bauer added that the two lots conveyed to Masterbilt; the benefit to both the city and Masterbilt is since they own the adjacent lot, Masterbilt will be fencing in the lot in. They have had a lot of dumping occurring at that site; the fence will prevent that from happening on the property.

Commissioner Relos asked when the right of way was vacated on the north side of temple property; there is a separate parcel that is included in the deed.

Ms. Weiss noted that there are a few parcels that appear to have no ownership according to property records, which we will need to investigate. The parcel being returned to us has the best title as a quiet title judgment which is more valuable.

Mr. Bauer noted that the railroad piece is something the city and Masterbilt will need to look into. On GIS it does appear to be subdivided. There were existing easements here that Masterbilt cleaned up. Looking at the Indiana Avenue parcel, there are a number of parcels that the Redevelopment Commission does own. We do believe ownership of these parcels could unlock potential redevelopment.

Commissioner Relos asked if the city has looked at vacating the two lots to the east of there.

Mr. Molnar stated yes, we have looked into that and will be making sure it is all cleaned up for buildability in the future.

Matt Barrett, resident noted that the property was sold for \$30k, the city is paying \$50k to acquire the property back but the agreement states that the purchaser would not be reimbursed for any expenses that the purchaser incurred to develop the property if they did not comply with the terms of the agreement which required \$1.2M investment. The title that was transferred specifically says in the event that they fail to perform the property improvements, in accordance with section eleven then the grantor being the city can enter and terminate and reinvest in the grantor the estate granted to the grantor guaranteed by this deed. All of the grantee's rights and interests in the property without offset or compensation for the value of any improvements to the property made by the grantee. Mr. Barrett states he is wondering what their legal argument is as why they are entitled to anything from the city.

Mr. Bauer replied that Masterbilt has been in communication with the city throughout the process, including the facility on Voorde Drive. Not only has Masterbilt continued to invest within the city, but they have added at least a dozen new jobs. They could have built outside of the city but they have continued to stay in South Bend. They have been upfront as to why it was a better decision for them to purchase an existing building rather than to build at a new site. We appreciate the time and work they invested in cleaning up the title at the site to make it more attractive to future developers. We believe they are a good partner and will continue to be a good partner with the city.

Ms. Weiss noted that there were actually forty new jobs brought into their new facility from Mishawaka to the Voorde Drive location and that they made a multi-million-dollar investment in the Voorde Drive plant.

Mr. Barrett stated that he feels they were rewarded for doing the things that they had done as opposed to things they were supposed to do.

Mr. Bauer stated that he doesn't think this should be noted as a reward. They are re-cooping the original payment amount by returning the property to the Redevelopment Commission and the Commission is off setting a portion of cost incurred with the quiet title. Masterbilt had other costs incurred that will not be reimbursed including design plans and other costs.

Secretary Sallie stated Masterbilt will continue to invest in South Bend and will continue the partnership.

Commissioner Relos asked if they bought a place in Elkhart.

Mr. Corcoran stated that they have a few facilities including one in San Diego and one in Phoenix.

Commissioner Relos stated that they had an option to move out of South Bend, but they didn't.

Mr. Bauer replied that is correct.

Mr. Barrett stated he is trying to figure out what the policy is as he does not see this as furthering the company. He doesn't understand the claw back.

Mr. Bauer noted that it is very important to weigh the message that litigation sends from the Redevelopment Commission. It sends a message to the business community. When a business is not cooperative with the city and the Redevelopment Commission, that is different than companies that are communicative and operating in good faith.

Mr. Barrett states that he sees that but does not see a legal argument as to where they are entitled to this. Sometimes the failure to bring litigation forward sends a message. He does not pretend to know all the facts.

Mr. Bauer states the strength of our agreements are how they are prepared and presented; this is what allows us to work with businesses.

Commissioner Relos noted that since they are on the tax roll now, perhaps we can get pro-rated taxes from them.

Upon a motion by Commissioner Relos, seconded by Secretary Sallie, the motion carried unanimously, the Commission approved Resolution No. 3575 (Approving R Ray Real Estate (Masterbilt) Settlement) submitted on Thursday, June 22, 2023.

3. Budget Request (SBCC Traffic Impact Study)

Charlotte Brach Presented a Budget Request (SBCC Traffic Impact Study). Commission approval is requested. This request is for a new traffic impact study for the new South Bend Chocolate site on US 20. They have requested a signal at US 20 and Olive to help with traffic flow. A study is required to determine if this is necessary. This is for \$40k to cover the study which will be split with the developer (50%).

Secretary Sallie asked if this is premature as the business is not open. How will traffic be determined since it will vary once business is opened.

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Ms. Brach noted that the company will add traffic projections based on a business being opened and projected traffic.

Mr. Bauer noted that the study can inform us what kind of light should be placed there. Right now, a flashing yellow light is projected but we are thinking it may require something more.

Upon a motion by Secretary Sallie, seconded by Commissioner Relos, the motion carried unanimously, the Commission approved Budget Request (SBCC Traffic Impact Study) submitted on Thursday, June 22, 2023.

6. Progress Reports

A. Tax Abatement

1. Erik Glavich noted that the following abatements were approved at Council on June 12, 2023:
 - Verbio North America, LLC/Ethanol Plant at 3201 W Calvert Street (5) year Personal Property Tax Abatement. There will be \$230M investment.
 - Verbio North America, LLC/Ethanol Plant at 3201 W Calvert Street (8) year Real Property Tax Abatement. They will install quite a bit of new equipment.
 - Reconfirming Resolution Diamond View Apartments, LP – (8) Year Tax Abatement; across from Four Winds Field; LIHTC Tax Credits were approved in January 2023. Sixty units all low income; they are partnering with the Logan Center to provide housing for some of their residents.
 - Declaratory Resolution RealAmerica Development, LLC - 8) Year Tax Abatement; this will be market rate apartments with office space on the first floor.
 - Resolution Designating Area GLC Portage Prairie, LLC – AMG expansion for their military production. Expansion of 167,000 square feet with a \$12M investment which will help fulfill the new Army contract received.
 - Resolution Designating Area Historic Property (Monarch Printing) (2) Year Vacant Building Tax Abatement. Investment of \$570k to re-hab the building in two phases. The first phase is for the first floor as office space, second floor as resident space.
 - Resolution Designating Area Historic Property (Monarch Printing) (2) Year Real Property Tax Abatement
 - David Nufer/Burton's Laundry was approved.
2. Mr. Glavich stated the following items would be presented at Council on June 26, 2023:
 - Declaratory Resolution for 1405 Portage Avenue, South Bend – 5 Year Tax Abatement
 - Declaratory Resolution for 1202 S Lafayette Blvd, South Bend – 10 Year Tax Abatement; this is for KCG a LIHTC project – low-income housing units.
 - Confirming Resolution for 5448 Dylan Drive, South Bend – 9 Year Tax Abatement
 - Confirming Resolution for 516 Michigan Street, South Bend – 6 Year Tax Abatement

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- Confirming Resolution Mixed-Use – 8 Year Real Property Tax Abatement for Real America Development, LLC at 504 S Lafayette Blvd
- Declaratory Resolution Multi-Family Development Real Property Tax Abatement for Advantix Development Corporation – Multiple Properties

B. Common Council

C. Other

1. Mr. Molnar stated that KCG is on RDC property, and the agreement will be coming in the next few meetings. Also, the Advantix property will be coming forth.

7. Next Commission Meeting:

Thursday, July 13, 2023

8. Adjournment

Thursday, June 22, 2023, 10:21 a.m.

Vivian Sallie, Secretary

Marcia Jones, President



**City of South Bend
Department of Administration & Finance
Claims Allowance Request**

To: South Bend Redevelopment Commission
From: Kyle Willis, City Controller
Date: Friday, July 7, 2023

Pursuant to Indiana Code 36-4-8-7, I have audited and certified the attached claims and submit them for allowance in the following amounts:

GBLN-0058781	\$1,945,068.03
GBLN-0059347	\$219,678.33
GBLN-0000000	\$0.00
Total:	<u>\$2,164,746.36</u>

Kyle Willis

The attached claims described above were allowed in the following total amount at a public meeting on the date stated below:

\$ 2,164,746.36

South Bend Redevelopment Commission

By: _____
Name:

Date:

Attest: _____
Name:

Expenditure approval

RDC Payments-6/27/23 Pymt Run

GBLN-0058781

Payment method: CHK-Total
Voucher: RDCP-00017616
Payment date: 6/27/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000874	INVANTI LLC	1178	541618 - Other Management Consulting Services	6/14/2023	\$62,500.00	433-10-102-123-439300--	PO-0009409

Payment method: CHK-Total
Voucher: RDCP-00017617
Payment date: 6/27/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001411	RIETH RILEY CONSTRUCTIO N	APP #2	Mill & Overlay	7/7/2023	\$187,906.10	324-10-102-121-442001-- PROJ00000352	PO-0020444
V-00001411	RIETH RILEY CONSTRUCTIO N	APP #2	Mill & Overlay	7/7/2023	\$1,434,109.03	430-10-102-121-442001-- PROJ00000352	PO-0020444

Payment method: CHK-Total
Voucher: RDCP-00017618
Payment date: 6/27/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00010644	Indiana Dinosaur Museum Inc	6/1 DRAW	SBCC Grant Indiana Dinosaur Museum	7/1/2023	\$193,443.00	324-10-102-121-441000-- PROJ00000403	PO-0022186
V-00010644	Indiana Dinosaur Museum Inc	6/7 DRAW	SBCC Grant Indiana Dinosaur Museum	7/7/2023	\$67,059.90	324-10-102-121-441000-- PROJ00000403	PO-0022186

Expenditure approval

RDC Payments-7/5/23 Pymt Run

GBLN-0059347

Payment method: CHK-Total
Voucher: RDCP-00017815
Payment date: 7/5/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000918	JONES PETRIE RAFINSKI	46519	Design	7/12/2023	\$4,217.00	429-10-102-121-431002-- PROJ00000317	PO-0013624
V-00000918	JONES PETRIE RAFINSKI	46518	Design	7/12/2023	\$502.88	429-10-102-121-431002-- PROJ00000317	PO-0013624

Payment method: CHK-Total
Voucher: RDCP-00017816
Payment date: 7/5/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001513	SLATILE ROOFING & SHEET METAL	3/16 INV	MarMain Roof Replacement	5/24/2023	\$140,773.85	324-10-102-121-443001-- PROJ00000372	PO-0021898

Payment method: ACH-Total
Voucher: RDCP-00017817
Payment date: 7/5/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001722	UNITED CONSULTING	1640671	16J008 ENGINEERING SERVICE PH II FOR	7/14/2023	\$8,325.81	324-10-102-121-443001-- PROJ00000018	PO-0000011

Payment method: ACH-Total
Voucher: RDCP-00017818
Payment date: 7/5/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
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V-00001933 LYNN WETZEL 91 Commuter's Trust Prof Svcs 7/7/2023 \$3,384.61 433-10-102-123-439300--
PROJ00000383 PO-0021586

Payment method: CHK-Total
Voucher: RDCP-00017819
Payment date: 7/5/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00008551	Engineering Resources, Inc.	577604	Change Order #1	7/8/2023	\$8,000.00	324-10-102-121-444000-- PROJ00000211	PO-0018948

Payment method: CHK-Total
Voucher: RDCP-00017820
Payment date: 7/5/2023

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00008672	USI Consultants, Inc	18169	Inspection Svcs for Coal Line Phase IIB	5/15/2023	\$24,852.48	324-10-102-121-444000-- PROJ00000018	PO-0019649
V-00008672	USI Consultants, Inc	18459	Inspection Svcs for Coal Line Phase IIB	7/15/2023	\$29,621.70	324-10-102-121-444000-- PROJ00000018	PO-0019649



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: July 10, 2023
FROM: Chris Dressel
SUBJECT: Budget Request (Coal Line Multiuse Trail Construction)

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

PURPOSE OF REQUEST:

Staff requests the Redevelopment Commission's approval of an additional \$87,000 to be budgeted for construction of the Coal Line Trail Phase II (between Riverside Drive and IN 933)

This request covers additional construction costs of Phase II in 2023 with two concurrent projects, one including the trail plus amenities and a second including the river bridge crossing.

If you should have any questions or need more information, please feel free to contact me at either cdressel@southbendin.gov or 235-5847.

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 \$ _____



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 7/6/23
FROM: Joseph Molnar
SUBJECT: Real Estate Purchase Agreement 1202 S. Lafayette

_____ Pres/V-Pres

ATTEST: _____ Secretary

Date: _____

APPROVED Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

PURPOSE OF REQUEST: Purchase Agreement for 1202 S. Lafayette.

Specifics: This Real Estate Purchase Agreement is for 1202 S. Lafayette, located at the southeast corner of Lafayette and Stull. KCG Development is applying for low-income housing tax credits with plans to construct a new building on the site for income-based 55 years and older, multi-family housing. The current plan is for 50 housing units total.

The sale of property will only proceed if the developer is awarded the low-income housing tax credits. Awarding of the low-income housing tax credits will happen this November. The Agreement includes a purchase price of \$1,000 and a minimum investment on behalf of the developer of \$13 million and completion within 30 months of the construction commencement date.

Staff requests approval of this Agreement.

INTERNAL USE ONLY: Project Code: _____;

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

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

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

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

_____ . Going to BPW for Contracting? Y/N

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

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this "Agreement") is made and entered into as of July 13, 2023, by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission ("Seller") and KCG Development, LLC, a Florida limited liability company and/or its permitted assigns with its principal place of business at 9311 N. Meridian Street, Suite 100 Indianapolis, Indiana 46260 ("Buyer").

RECITALS

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

B. In furtherance of its purposes under the Act, Seller owns the real property commonly known as 1202 S. Lafayette, South Bend, Indiana, and further described in Exhibit A attached hereto and incorporated herein (collectively, the "Property").

C. Pursuant to the Act, Seller adopted its Resolution No. 3106 on November 29, 2012, whereby Seller established an offering price of Thirty-Two Thousand and Seven Hundred Dollars (\$32,700.00) (the "Appraised Value") for the Property.

D. Pursuant to the Act, on November 29, 2012, Seller authorized the publication on December 7, 2012 and December 14, 2012, respectively, of a notice of its intent to sell the Property and its desire to receive bids for the Property on or before January 10, 2013.

E. At its public meeting on January 10, 2013, Seller received zero (0) bids.

F. Buyer has the opportunity to apply for low-income housing tax credits and desires to enter into an agreement for the purchase of the Property.

G. In accordance with Section 22 of the Act, Seller now desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, on the terms stated in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained in this Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **AGREEMENT TO SELL AND PURCHASE; ACCEPTANCE DATE.** Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller, pursuant to the covenants, provisions and other terms and conditions contained in this Agreement. The Property shall include certain parcels of land described in Exhibit A and the transferable improvements, fixtures, easements, licenses, permits and all of Seller's other rights, title and interest appurtenant and otherwise relating thereto. The "Acceptance Date" as referenced herein from time to time, shall mean the latest date upon which all parties to this Agreement execute the Agreement and deliver such executed Agreement to all other parties hereto.

2. **PURCHASE PRICE; EARNEST MONEY.** The purchase price for the Property shall be One Thousand Dollars (\$1,000.00) (the "Purchase Price"), payable by Buyer to Seller in cash at the closing described in Section 7 below. Buyer shall submit to Seller earnest money

in the amount of One Hundred Dollars (\$100.00) (the "Earnest Money") on or before the Acceptance Date. Seller will hold such Earnest Money unless and until it is to be disposed in accordance with the terms of this Agreement and will bear no interest for any period of time. The Earnest Money shall be refundable until the expiration or waiver of Buyer's Contingency (as defined in Section 4(c) below), at which time the Earnest Money shall be non-refundable, except as provided herein, but shall remain applicable to the Purchase Price at Closing (as defined below).

3. **PROPERTY INFORMATION; CONTRACTS.** Within fifteen (15) days of the Acceptance Date, Seller shall provide Buyer, to the extent not previously provided, and to the extent in Seller's possession or control, copies of any and all reports, contracts, leases, guaranties, warranties, and surveys relating to the Property or relevant to a reasonable Buyer's determination whether to purchase the Property (the "Property Information"). Seller further agrees to deliver promptly to Buyer copies of any additional Property Information that Seller obtains prior to Closing. Prior to Closing, Seller shall terminate any and all property management, maintenance, lawn care, snow plowing and other contracts and agreements relating to the Property, unless Buyer has consented to the continuation of any such contract or agreement.

4. **INVESTIGATION; BUYER'S CONTINGENCY; INDEMNIFICATION; INSURANCE.**

A. Seller acknowledges that Buyer contemplates acquiring the Property for Buyer's intended use of the Property as income-based, multi-family housing with a minimum fifty (50) housing units (the "Intended Use"). From and after the Acceptance Date, and upon Buyer providing Seller with evidence that Buyer has commercial general liability insurance reasonably acceptable to Seller in the amount of at least One Million Dollars (\$1,000,000.00) per occurrence, Buyer and its agents shall have the right, but no obligation, at its sole cost: (i) to enter upon the Property to conduct the tests, inspections, studies, assessments and investigations contemplated under this Agreement at any time and from time to time (collectively, "Tests"); and (ii) to make such Tests of the Property and information with respect to the Property, the Intended Use and/or this Agreement, all as Buyer may deem desirable, including, without limitation: [a] any environmental assessment, evaluation or study (including a "Phase I" environmental site assessment); and [b] topographic, engineering, traffic, parking and other feasibility studies. Notwithstanding the foregoing, Buyer will not conduct any invasive Tests, including, without limitation, Phase II environmental assessments or soil borings, without Seller's prior written consent, which consent shall not be unreasonably withheld or delayed. Buyer shall conduct all Tests at a time and in a manner as to reasonably minimize interference with Seller's operation on or about the Property and any neighboring properties. Buyer shall indemnify, defend and hold Seller, its officials, members, employees, agents, contractors, lessees, licensees, invitees, successors and assigns harmless from any and all liabilities, claims, damages and expenses (including attorneys' fees, court costs, and costs of investigation) arising out of or in connection with the Tests or the entry on to the Property by Buyer or its agents. From and after the Acceptance Date, Seller agrees that Seller shall, at the request of Buyer and without cost to Seller, cooperate with Buyer in connection with any and all private and governmental approvals, rezoning, land subdivisions and other matters necessary for Buyer's Intended Use.

B. In addition to any and all other conditions and contingencies in this Agreement, Buyer's obligations under this Agreement are hereby conditioned upon Buyer's

receipt of a low-income housing tax credit (“LIHTC”) reservation from the Indiana Housing and Community Development Authority (“IHCDA”) for the Intended Use. If the LIHTC reservation is not received within one hundred and forty (140) days of IHCDA accepting Buyer's application for review, this Agreement shall terminate at Buyer's election and in such event all Earnest Money shall be returned to Buyer. Buyer represents that IHCDA intends to accept project applications on or around July 26, 2023 and announce reservations ("Reservation") on or about November 17, 2023. In the event Buyer fails to submit its application to IHCDA prior to the published deadline this Agreement shall terminate and all Earnest Money shall be returned to Buyer. In the event that Buyer obtains a LIHTC Reservation from IHCDA but is unable to obtain a commitment for an equity investment from a tax credit investor on terms that are satisfactory to Buyer, in Buyer's sole discretion and in an amount sufficient for the Intended Use, within six (6) months after obtaining the LIHTC Reservation from IHCDA, despite Buyer's best reasonable efforts, this Agreement shall terminate at Buyer's election and in such event all Earnest Money shall be returned to Buyer.

C. If at any time on or before December 31, 2024 (the “Contingency Date”), Buyer determines, for any reason, in Buyer's sole discretion, that the Property or the transaction described herein is unacceptable to Buyer, then Buyer shall have the right to terminate this Agreement by giving written notice of termination to Seller at any time on or before the Contingency Date in which event, at Buyer's election, all Earnest Money shall be returned to Buyer (“Buyer's Contingency”). Any failure by Buyer to give such notice shall constitute an election by Buyer to not so terminate, in which event Buyer's right to terminate this Agreement shall be deemed to have been waived. Following any termination of this Agreement, the parties shall be relieved of any further obligations or liabilities under this Agreement, except those obligations that expressly survive termination hereof.

D. In anticipation of performing its obligations under Section 9 below, Buyer will prepare plans and specifications for constructing a new building on the Property and all other related improvements (collectively, the “Property Improvements”), including plans and specifications for the manner in which the new building will be designed (the “Construction Plan”). Buyer agrees to cooperate with the Executive Director, or his designee, of the City's Department of Community Investment (the “City”) in developing its Construction Plan.

5. **TITLE INSURANCE; SURVEY.** Within thirty (30) days of the Acceptance Date, Seller, at Buyer's sole cost, shall deliver a written commitment by a title insurance company selected by Buyer (the “Title Company”) to issue to Buyer a current ALTA Form owner's policy of title insurance with respect to the Property in an amount determined by Buyer (the “Title Commitment”). Buyer shall have the right to obtain, at Buyer's sole cost, a new or updated survey, in a form determined by Buyer (the “Survey”). Seller's special warranty of title set forth in the deed and Seller's other representations and warranties, if any, with respect to the Property shall be subject to all exceptions set forth elsewhere in this Agreement and all matters disclosed on the Title Commitment or Survey including, without limitation, all easements, covenants, conditions, restrictions, requirements, standard exceptions and special exceptions, except for monetary liens which will be paid out of Closing. If the Title Commitment or Survey discloses any matters unacceptable to Buyer, in Buyer's sole discretion, (the “Title Defects”), Buyer shall notify Seller of such Title Defects no later than ninety (90) days before the Contingency Date. If Seller fails to correct the Title Defects to Buyer's satisfaction in advance of the Contingency Date, Buyer may (a) terminate this Agreement upon

written notice to Seller and all Earnest Money shall be returned to Buyer, or (b) waive Buyer's objection to such Title Defects and take title subject to the same. Any title exceptions contained on the Title Commitment and not objected to by Buyer in accordance with this Section 5, or a title exception that shall be objected to initially, but such objection thereto is later waived or acquiesced to by Buyer, shall be deemed a "Permitted Exception" hereunder.

6. ADDITIONAL REPRESENTATIONS AND WARRANTIES OF SELLER.

A. Seller hereby represents and warrants to Buyer that all of the following are true, correct and complete on and as of the date hereof, and shall continue to be true, correct and complete as of the Closing Date:

1. Seller has no actual knowledge of (A) any orders from or agreements with any governmental authority or private party or any judicial or administrative proceedings or investigations, whether pending or threatened, respecting any environmental, health or safety requirements under federal, state or local laws or regulations relating to the Property, or (B) any pending, asserted or threatened claims or matters involving material liabilities, obligations or costs arising from the existence, release or threatened or alleged release of any Hazardous Substances at, on or beneath the Property. "Hazardous Substances" shall mean any hazardous or toxic material, substance or waste, pollutant or contaminant which is defined as a hazardous substance or hazardous waste under any Environmental Laws (as defined below).

2. No notice from any governmental body or other person has been served upon Seller or upon the Property claiming the violation of any law or any building, zoning, environmental, health or other ordinance, code, rule or regulation relating to the Property. There are no legal actions, suits or administrative proceedings, including condemnation cases or eminent domain proceedings commenced, pending or threatened against the Property or any portion thereof. Seller has not received notice of any negotiations for purchase in lieu of condemnation relating to the Property or any portion thereof.

a. Seller is not a party to any agreement or commitment to sell, convey, assign, transfer, provide rights of first refusal or other similar rights with respect to, or otherwise dispose of, any part of the Property or any interest therein other than this Agreement. Neither Seller nor any person or entity claiming by, through or under Seller has done or suffered anything whereby any lien, encumbrance, claim or right of another has been created against the Property or any portion thereof or any interest therein other than this Agreement, the Permitted Exceptions and possible construction or materialmen's lien claims arising out of work performed by or on behalf of Seller which will be removed at or before the Closing.

b. There is no action, proceeding or investigation pending or to the best of Seller's knowledge, threatened against Seller or with respect to the Property or any portion thereof before any court or governmental or quasi-governmental department, commission, board, agency or instrumentality.

c. The signatories to this Agreement on behalf of Seller have full right, power and authority to enter into this Agreement and to consummate the transactions contemplated herein. This Agreement is valid and enforceable against Seller in accordance with its terms. Each instrument to be executed by Seller pursuant hereto or in connection herewith will, when executed and delivered, be valid and enforceable in accordance with its terms.

d. The accuracy of all Seller representations and warranties contained in this Agreement shall be a condition to Buyer's obligations under this Agreement, which condition will be merged at the time of, and will not survive, the Closing. If any of the representations or warranties contained in this Agreement is untrue in any material respect and is not cured (at no cost to Buyer) prior to the scheduled Closing, then Buyer may elect to (i) purchase the Property as it then is or, (ii) terminate this Agreement and, anything in this Agreement to the contrary notwithstanding, receive a refund of all Earnest Money.

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

7. CLOSING.

A. Provided that all conditions of closing hereunder have been satisfied or waived, the closing of the transaction described herein (the "Closing") shall occur at the offices of the Title Company on the Closing Date. The "Closing Date" shall be the Contingency Date, or such earlier or later date as may be agreed to in writing by Seller and Buyer.

B. The following shall occur on or before the Closing Date:

1. Seller shall deliver all of the following to Buyer, all of which shall be fully-executed by Seller, as appropriate:

a. A special warranty deed in the form attached hereto as Exhibit B sufficient to convey and warrant to Buyer fee simple absolute title to the Property, to extent such title is affected by Seller's actions, subject only to the Permitted Exceptions (the "Special Warranty Deed"), which Special Warranty Deed will restrict Buyer's use of the Property to the Intended Use and other uses as allowed by this Agreement, and will prohibit Buyer from discriminating in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property;

b. An affidavit of title in customary form covering the Closing Date and showing title in Seller, subject only to the Permitted Exceptions;

- c. Any required real estate sale disclosure;
 - d. Such other documents as may be necessary or proper to comply with this Agreement or required (by the Title Company or otherwise) to carry out its terms.
 2. Buyer shall deliver all of the following to Seller, all of which shall be fully-executed by Buyer, as appropriate:
 - a. The balance of the Purchase Price, plus or minus prorations, credits and other adjustments, by wire transfer or otherwise in immediately available funds;
 - b. Any required real estate sale disclosure;
 - c. Such other documents as may be necessary or proper to comply with this Agreement or required to carry out its terms.
 3. Seller shall cause the Title Company to issue to Buyer at Closing a current ALTA Form owner's policy of title insurance, with extended coverage, pursuant to the Title Commitment and containing all amendments and endorsements required by this Agreement or otherwise reasonably required by Buyer, which policy and endorsements shall be at Buyer's sole cost, and which shall only be subject to the Permitted Exceptions.
 4. Exclusive occupancy of the Property shall be delivered to Buyer at Closing, except for the continuation of any installations, equipment, or access by personnel upon the Property that Seller or Seller's representatives or contractors may require in connection with carrying out Seller's Work in accordance with the terms of this Agreement.

8. PRORATIONS; REAL ESTATE TAXES AND ASSESSMENTS; CLOSING COSTS.

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

B. At Closing, Seller shall pay the costs of releasing all liens, judgments, and other encumbrances that are to be released and of recording such releases. At Closing, Buyer shall pay (i) all fees and costs due Title Company for its closing, document preparation, and/or escrow services, (ii) the cost of the premium for the Title Policy and all endorsements to the Title Policy (iii) the cost of the Survey, (iv) the cost of any lender's policy of title insurance or endorsements thereto, and (v) the cost of recordation of any instrument associated with the transaction contemplated in this Agreement, except as provided in the foregoing sentence. Except as otherwise provided for in this Agreement,

Seller and Buyer will each be solely responsible for and bear all of their own respective expenses, including, without limitation, expenses of legal counsel, accountants, and other advisors incurred at any time in connection with pursuing or consummating the transaction contemplated herein. Any other closing costs not specifically designated as the responsibility of either party in this Agreement shall be paid by Buyer.

9. BUYER'S POST-CLOSING DEVELOPMENT OBLIGATIONS; CHANGE OF INTENDED USE.

A. **Property Redevelopment: Proof of Investment.** Provided Closing occurs, within six (6) months after the Closing Date, Buyer will commence construction and redevelopment of the Property for the Intended Use and will provide Seller with such commencement date (the "Construction Commencement Date"). Buyer will expend an amount (including hard and soft costs) of not less than Thirteen Million Dollars (\$13,000,000.00) to complete the Property Improvements to redevelop the Property for the Intended Use. Promptly upon completing the Property Improvements, Buyer will submit to Seller records proving the above required expenditures and will provide to Seller copies of the certificate(s) of occupancy for the Property Improvements. Buyer shall permit Seller to perform reviews and monitor the progress of the construction of the Property Improvements. The parties expect the Property Improvements to be completed within thirty (30) months of the Construction Commencement Date (the "Completion Date"). If the Property Improvements have not been completed by the Completion Date, the Buyer shall be in default under this Agreement.

B. **Certificate of Completion.** Promptly after Buyer completes the Property Improvements and proves the same to Seller's reasonable satisfaction in accordance with the terms of Section 9(a) above, upon Buyer's request, Seller will issue to Buyer a certificate acknowledging such completion (the "Certificate of Completion").

C. **Change of Intended Use.** Buyer covenants and agrees that neither Buyer nor any of Buyer's successors or assigns will change its use of the Property from the Intended Use of the Property defined above without obtaining Seller's prior consent to such change in writing.

D. Notwithstanding anything to the contrary herein, Seller agrees that upon an alleged breach of this Section 9, it will provide written notice to Buyer, and thereafter, Buyer shall have ninety (90) days to cure such default (the "**Cure Period**"). Seller agrees that it will not exercise remedies (i) under this Agreement, (ii) at law, and/or (iii) in equity during the Cure Period.

10. DEFAULT.

A. If Seller defaults under this Agreement, Buyer shall have any and all remedies available to it under this Agreement and otherwise at law or in equity including, without limitation: (i) the right of specific performance; (ii) the right to terminate this Agreement at any time after such default by delivering written notice of termination to Seller; and/or (iii) the right to sue for damages, provided, however, that in no event shall Seller be liable for more than One Thousand Dollars (\$1,000.00) in damages. In the event of any such termination, all Earnest Money shall be immediately returned to Buyer. All of Buyer's remedies shall be cumulative and not exclusive.

B. Subject to Section 9(D) hereof, if Buyer defaults under this Agreement, Seller shall re-enter and take possession of the Property and to terminate and revest in Seller the estate conveyed to Buyer at Closing and all of Buyer's rights and interests in the Property without offset or compensation for the value of any improvements made by Buyer.

C. In the event Seller pursues legal action (including arbitration) to enforce or interpret this Agreement, Buyer shall pay Seller's reasonable attorneys' fees and other costs and expenses (including expert witness fees).

11. COVENANTS OF SELLER. Between the date of this Agreement and the Closing Date, Seller shall:

A. not, without first obtaining the written consent of Buyer, enter into any leases, contracts or other agreements, nor grant or permit any rights to any other party, pertaining to the Property or any portion thereof, except in relation to Seller's performance of ongoing demolition work at the Property, if any;

B. comply with all private and governmental laws, rules, ordinances, regulations, covenants, conditions, restrictions, easements, liens and agreements affecting the Property or any portion thereof including, without limitation, the use thereof; and

C. comply with all requirements of the Title Company in connection with its insurance of fee simple title to the Property in Buyer as required under Section 5 hereof and elsewhere herein.

12. NOTICES.

A. All notices, demands and communications required or which either party desires to give or make hereunder shall be effective (at the time set forth in Section 13(b)) if in writing signed by or on behalf of the party giving or making the same, and if served/delivered to the addresses and/or fax numbers set forth below and in any of the following manners: (i) personally; (ii) by United States certified mail, return receipt requested; or (iii) by a national courier service for next business day delivery.

To Seller: City of South Bend Department of Community Investment
Attn: Executive Director
County-City Building, Suite 1400 S.
227 W. Jefferson Blvd.
South Bend, IN 46601
Telephone: 574-235-9337

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

To Buyer: KCG Development LLC
Attn: R.J. Pasquesi
9311 N. Meridian Street, Suite 100

Indianapolis, IN 46260

Either Party may, by written notice, modify its address or representative for future notices.

B. Notices given personally shall be deemed to have been given upon receipt. Notices mailed by United States mail shall be deemed to have been given on the third business day after the date of mailing or upon receipt by either party if a written receipt is signed therefor. Notices sent by United States mail or national courier service for next day or next business day delivery shall be deemed to have been given on such next day or next business day, as the case may be, following deposit. Any party hereto may change its address for the service as aforesaid by giving written notice to the other of such change of address in accordance with the provision of this Section 13.

C. Notwithstanding any other provision of this Agreement, Seller hereby grants Buyer the following extensions to the Closing Date: Buyer may extend the Closing Date up to three (3) times for a period of thirty (30) days each by providing written notice to Seller prior to the Closing Date, as it may be extended, and depositing additional earnest money in the amount of One Hundred Dollars (\$100.00) (each as "Additional Earnest Money") with the Title Company for each such additional thirty (30) day extension. Additional Earnest Money deposited pursuant to this Section 12 is non-refundable but shall be credited against the Purchase Price.

13. MISCELLANEOUS.

A. This written Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements between the Parties regarding the Property. There are no verbal agreements which can or will modify this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the Parties.

B. The Parties acknowledge and agree that Buyer's project on the Property is a private development and hereby renounce the existence of any form of agency relationship, joint venture, or partnership between Buyer and Seller and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such.

C. No member, official, or employee of Seller or the City of South Bend, Indiana 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, limited liability company, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of Seller or the City of South Bend, Indiana shall be personally liable to Buyer, or any successor in interest, in the event of any default or breach by Buyer or for any amount which may become due to Buyer, or its successors and assigns, or on any obligations under the terms of this Agreement.

D. Buyer and Seller represent and warrant to one another that it has not engaged or dealt with any broker or other person who would be entitled to any brokerage fee or commission with respect to the finding, negotiation or execution of this Agreement or the consummation of the transactions contemplated hereby.

E. This Agreement shall be construed and enforceable in accordance with 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, unless the parties mutually agree to an alternative method of dispute resolution. Both parties hereby waive any right to trial by jury with respect to any action or proceeding relating to this Agreement.

F. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. 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. Except for an assignment by Buyer to an entity of which Buyer has a controlling interest, Buyer may not assign its rights and obligations under this Agreement without Seller's prior written consent. In the event Buyer wishes to obtain Seller's consent regarding a proposed assignment of this Agreement, Seller may request and Buyer shall provide any and all information reasonably demanded by Seller in connection with the proposed assignment and/or the proposed assignee. The unenforceability or invalidity of any provisions hereof shall not render any other provisions herein contained unenforceable or invalid.

G. It is the intent of Buyer and Seller that this Agreement shall be binding on both parties and not illusory. Buyer and Seller acknowledge that Buyer and Seller will expend significant time, effort and expense in performing their respective obligations under this Agreement, which constitutes legally adequate consideration.

H. 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.

I. This Agreement and any and all documents and signatures relating thereto may be transmitted by electronic mail. All of such documents and signatures transmitted by electronic mail shall be deemed to be originals. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same agreement.

J. Time is of the essence as to all terms and conditions of this Agreement.

K. Sections 9, 10, 12, and 13 shall survive the termination of this Agreement.

[Signatures on the following page(s)]

SELLER:

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Dated this ___ day of _____, 2023.


Marcia I. Jones, President

ATTEST:

Vivian Sallie, Secretary

BUYER:

KCG Development, LLC



By: R.J. Pasquesi, President

Dated this 6th day of July, 2023.

Exhibit A

Description of Property

PARCEL I: LOTS NUMBER EIGHTEEN AND NINETEEN AS SHOWN ON THE RECORDED PLAT OF SAMUEL C. STULL'S FIRST ADDITION TO THE CITY OF SOUTH BEND, RECORDING JUNE 8, 1884 IN PLAT BOOK 4, PAGE 50 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, EXCEPTING 50 FEET TAKEN OFF OF AND FROM THE ENTIRE EAST SIDE OF SAID LOTS FOR THE PENNSYLVANIA RAILROAD.

Tax ID: 018-8004-01625
Parcel ID: 71-08-13-152-001.000-026
Address: 1202 Lafayette

PARCEL II: BEGINNING AT THE NORTHWEST CORNER LOT 17 AS SHOWN ON THE RECORDED PLAT OF SAMUEL C. STULL'S FIRST ADDITION TO THE CITY OF SOUTH BEND, THENCE RUNNING EAST 110 FEET; THENCE RUNNING WEST 115 FEET TO THE EAST LINE OF LAFAYETTE BOULEVARD; THENCE RUNNING NORTH ALONG THE EAST LINE OF LAFAYETTE BOULEVARD, 110 FEET TO THE PLACE OF BEGINNING

Tax ID: 018-8004-0164
Parcel ID: 71-08-13-152-002.000-026
Address: 1202 Lafayette

Exhibit B

Form of Special Warranty Deed

SPECIAL WARRANTY DEED

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

CONVEYS AND SPECIALLY WARRANTS to KCG Development, LLC, an Indiana limited liability company and/or its permitted assigns with its principal place of business at 9311 N. Meridian Street, Suite 100 Indianapolis, Indiana 46260 (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 located in St. Joseph County, Indiana (the "Property"):

PARCEL I: LOTS NUMBER EIGHTEEN AND NINETEEN AS SHOWN ON THE RECORDED PLAT OF SAMUEL C. STULL'S FIRD ADDITION TO THE CITY OF SOUTH BEND, RECORDING JUNE 8, 1884 IN PLAT BOOK 4, PAGE 50 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, EXCEPTING 50 FEET TAKEN OFF OF AND FROM THE ENTIRE EAST SIDE OF SAID LOTS FOR THE PENNSYLVANIA RAILROAD.

PARCEL II: BEGINNING AT THE NORTHWEST CORNER LOT 17 AS SHOWN ON THE RECORDED PLAT OF SAMUEL C. STULL'S FIRST ADDITION TO THE CITY OF SOUTH BEND, THENCE RUNNING EAST 110 FEET; THENCE RUNNING WEST 115 FEET TO THE EAST LINE OF LAFAYETTE BOULEVARD; THENCE RUNNING NORTH ALONG THE EAST LINE OF LAFAYETTE BOULEVARD, 110 FEET TO THE PLACE OF BEGINNING

Parcel Key Numbers: 018-8004-01625, 018-8004-0164

Grantor, as its sole warranty herein, specially warrants to Grantee, and to Grantee's successors and assigns, that Grantor will forever defend title to the Property against those claims, and only those claims, of all persons who shall claim title to or assert claims affecting the title to the Property, or any part thereof, under, by or through, or based upon the acts of Grantor, but not otherwise, subject to the all current, non-delinquent real estate taxes and assessments.

Grantor and Grantee covenant and agree that Grantor conveys the Property to Grantee subject to the requirement that Grantee, and its successors and assigns, may use the Property solely for (i) income-based, multi-family housing, and market-rate multifamily housing (ii) any other use consented to in writing by Grantor, and Grantee shall not discriminate in the lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property. This restriction will at all times be subject to any mortgages recorded against the Property, and any foreclosure or deed in lieu of foreclosure with regard to any such mortgage shall automatically without further action terminate this restriction.

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

[Signature page follows.]

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

Marcia I. Jones, President

ATTEST:

Vivian Sallie, Secretary

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

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

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the _____ day of _____, 20____.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

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

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



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 7/7/23
FROM: Joseph Molnar
SUBJECT: Real Estate Purchase Agreement 1202 S. Lafayette

_____ Pres/V-Pres

ATTEST: _____ Secretary

Date: _____

APPROVED Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

PURPOSE OF REQUEST: Purchase Agreement for various properties at LWW & Marion.

Specifics: This Real Estate Purchase Agreement is for RDC owned properties at LWW & Marion, located north of Lincoln Way West and South of Marion. Advantix Development Corp. is applying for low-income housing tax credits with plans to construct a 50 affordable income restricted units on 37 currently City owned vacant lots. The majority of those 37 lots are owned by the Board of Public Works, the properties at LWW & Marion provide the remainder of needed properties for the overall project.

The sale of property will only proceed if the developer is awarded the low-income housing tax credits. Awarding of the low-income housing tax credits will happen this November. The Agreement includes a purchase price of \$1,000 and a minimum investment on behalf of the developer of \$1 million on this site and completion within 30 months of the construction commencement date. The overall Advantix project will be over \$13 million dollars.

Staff requests approval of this Agreement.

INTERNAL USE ONLY: Project Code: _____;
Total Amount new/change (inc/dec) in budget: _____; Break down:
Costs: Engineering Amt: _____; Other Prof Serv Amt _____;
Acquisition of Land/Bldg (circle one) Amt: _____; Street Const Amt _____;
Building Imp Amt _____; Sewers Amt _____; Other (specify) Amt: _____
_____. Going to BPW for Contracting? Y/N
Is this item ready to encumber now? ____ Existing PO# _____ Inc/Dec \$ _____

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this “Agreement”) is made and entered into as of July 13, 2023, by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) Advantix Development Corporation, an Indiana non-profit corporation, with its registered address being 500 SE 10th Street, Evansville, Indiana 47713 (“the Buyer”) (each a “Party,” and together the “Parties”).

RECITALS

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

B. In furtherance of its purposes under the Act, Seller owns the real property described in Exhibit A attached hereto and incorporated herein (collectively, the “Property”).

C. Pursuant to the Act, Seller adopted its Resolution No. 3568 on January 26, 2023, whereby Seller established a total offering price of Seventy-Two Thousand Nine Hundred and Fifty-Two Dollars (\$72,952.00) (the “Appraised Value”) for the Property and other adjacent lots.

D. Pursuant to the Act, on January 26, 2023, Seller authorized the publication on February 3, 2023 and February 10, 2023, respectively, of a notice of its intent to sell the Property and other adjacent lots and its desire to receive bids for the Property and other adjacent lots on or before February 23, 2023.

E. At its public meeting on February 23, 2023, Seller received zero (0) bids.

F. Buyer has the opportunity to apply for low-income housing tax credits and desires to enter into an agreement for the purchase of the Property.

G. In accordance with Section 22 of the Act, Seller now desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, on the terms stated in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained in this Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. AGREEMENT TO SELL AND PURCHASE; ACCEPTANCE DATE. Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller, pursuant to the covenants, provisions and other terms and conditions contained in this Agreement. The Property shall include certain parcels of land described in Exhibit A and the transferable improvements, fixtures, easements, licenses, permits and all of Seller's other rights, title and interest appurtenant and otherwise relating thereto. The “Acceptance Date” as referenced herein from time to time, shall mean the latest date upon which all parties to this Agreement execute the Agreement and deliver such executed Agreement to all other parties hereto.

2. PURCHASE PRICE; EARNEST MONEY. The purchase price for the Property shall be One Thousand Dollars (\$1,000.00) (the “Purchase Price”), payable by Buyer to Seller in cash at the closing described in Section 7 below. Buyer shall submit to Seller earnest money

in the amount of One Hundred Dollars (\$100.00) (the "Earnest Money") on or before the Acceptance Date. Seller will hold such Earnest Money unless and until it is to be disposed in accordance with the terms of this Agreement and will bear no interest for any period of time. The Earnest Money shall be refundable until the expiration or waiver of Buyer's Contingency (as defined in Section 4(c) below), at which time the Earnest Money shall be non-refundable, except as provided herein, but shall remain applicable to the Purchase Price at Closing (as defined below).

3. PROPERTY INFORMATION; CONTRACTS. Within fifteen (15) days of the Acceptance Date, Seller shall provide Buyer, to the extent not previously provided, and to the extent in Seller's possession or control, copies of any and all reports, contracts, leases, guaranties, warranties, and surveys relating to the Property or relevant to a reasonable Buyer's determination whether to purchase the Property (the "Property Information"). Seller further agrees to deliver promptly to Buyer copies of any additional Property Information that Seller obtains prior to Closing. Prior to Closing, Seller shall terminate any and all property management, maintenance, lawn care, snow plowing and other contracts and agreements relating to the Property, unless Buyer has consented to the continuation of any such contract or agreement.

4. INVESTIGATION; BUYER'S CONTINGENCY; INDEMNIFICATION; INSURANCE.

A. Seller acknowledges that Buyer contemplates acquiring the Property for Buyer's intended use of the Property as income-based, multi-family housing with a minimum ten (10) housing units (the "Intended Use"). From and after the Acceptance Date, and upon Buyer providing Seller with evidence that Buyer has commercial general liability insurance reasonably acceptable to Seller in the amount of at least One Million Dollars (\$1,000,000.00) per occurrence, Buyer and its agents shall have the right, but no obligation, at its sole cost: (i) to enter upon the Property to conduct the tests, inspections, studies, assessments and investigations contemplated under this Agreement at any time and from time to time (collectively, "Tests"); and (ii) to make such Tests of the Property and information with respect to the Property, the Intended Use and/or this Agreement, all as Buyer may deem desirable, including, without limitation: [a] any environmental assessment, evaluation or study (including a "Phase I" environmental site assessment); and [b] topographic, engineering, traffic, parking and other feasibility studies. Notwithstanding the foregoing, Buyer will not conduct any invasive Tests, including, without limitation, Phase II environmental assessments or soil borings, without Seller's prior written consent, which consent shall not be unreasonably withheld or delayed. Buyer shall conduct all Tests at a time and in a manner as to reasonably minimize interference with Seller's operation on or about the Property and any neighboring properties. Buyer shall indemnify, defend and hold Seller, its officials, members, employees, agents, contractors, lessees, licensees, invitees, successors and assigns harmless from any and all liabilities, claims, damages and expenses (including attorneys' fees, court costs, and costs of investigation) arising out of or in connection with the Tests or the entry on to the Property by Buyer or its agents. From and after the Acceptance Date, Seller agrees that Seller shall, at the request of Buyer and without cost to Seller, cooperate with Buyer in connection with any and all private and governmental approvals, rezoning, land subdivisions and other matters necessary for Buyer's Intended Use.

B. In addition to any and all other conditions and contingencies in this Agreement, Buyer's obligations under this Agreement are hereby conditioned upon Buyer's

receipt of a low-income housing tax credit (“LIHTC”) reservation from the Indiana Housing and Community Development Authority (“IHCDA”) for the Intended Use. If the LIHTC reservation is not received within one hundred and forty (140) days of IHCDA accepting Buyer's application for review, this Agreement shall terminate at Buyer’s election and in such event all Earnest Money shall be returned to Buyer. Buyer represents that IHCDA intends to accept project applications on or around July 26, 2023 and announce reservations ("Reservation") on or about November 17, 2023. In the event Buyer fails to submit its application to IHCDA prior to the published deadline this Agreement shall terminate and all Earnest Money shall be returned to Buyer. In the event that Buyer obtains a LIHTC Reservation from IHCDA but is unable to obtain a commitment for an equity investment from a tax credit investor on terms that are satisfactory to Buyer, in Buyer's sole discretion and in an amount sufficient for the Intended Use, within six (6) months after obtaining the LIHTC Reservation from IHCDA, despite Buyer's best reasonable efforts, this Agreement shall terminate at Buyer’s election and in such event all Earnest Money shall be returned to Buyer.

C. If at any time on or before December 31, 2024 (the “Contingency Date”), Buyer determines, for any reason, in Buyer's sole discretion, that the Property or the transaction described herein is unacceptable to Buyer, then Buyer shall have the right to terminate this Agreement by giving written notice of termination to Seller at any time on or before the Contingency Date in which event, at Buyer’s election, all Earnest Money shall be returned to Buyer (“Buyer's Contingency”). Any failure by Buyer to give such notice shall constitute an election by Buyer to not so terminate, in which event Buyer's right to terminate this Agreement shall be deemed to have been waived. Following any termination of this Agreement, the parties shall be relieved of any further obligations or liabilities under this Agreement, except those obligations that expressly survive termination hereof.

D. In anticipation of performing its obligations under Section 9 below, Buyer will prepare plans and specifications for constructing a new building on the Property and all other related improvements (collectively, the “Property Improvements”), including plans and specifications for the manner in which the new building will be designed (the “Construction Plan”). Buyer agrees to cooperate with the Executive Director, or his designee, of the City’s Department of Community Investment (the “City”) in developing its Construction Plan.

5. TITLE INSURANCE; SURVEY. Within thirty (30) days of the Acceptance Date, Seller, at Buyer’s sole cost, shall deliver a written commitment by a title insurance company selected by Buyer (the “Title Company”) to issue to Buyer a current ALTA Form owner's policy of title insurance with respect to the Property in an amount determined by Buyer (the “Title Commitment”). Buyer shall have the right to obtain, at Buyer’s sole cost, a new or updated survey, in a form determined by Buyer (the “Survey”). Seller's special warranty of title set forth in the deed and Seller's other representations and warranties, if any, with respect to the Property shall be subject to all exceptions set forth elsewhere in this Agreement and all matters disclosed on the Title Commitment or Survey including, without limitation, all easements, covenants, conditions, restrictions, requirements, standard exceptions and special exceptions, except for monetary liens which will be paid out of Closing. If the Title Commitment or Survey discloses any matters unacceptable to Buyer, in Buyer's sole discretion, (the “Title Defects”), Buyer shall notify Seller of such Title Defects no later than ninety (90) days before the Contingency Date. If Seller fails to correct the Title Defects to Buyer's satisfaction in advance of the Contingency Date, Buyer may (a) terminate this Agreement upon

written notice to Seller and all Earnest Money shall be returned to Buyer, or (b) waive Buyer's objection to such Title Defects and take title subject to the same. Any title exceptions contained on the Title Commitment and not objected to by Buyer in accordance with this Section 5, or a title exception that shall be objected to initially, but such objection thereto is later waived or acquiesced to by Buyer, shall be deemed a "Permitted Exception" hereunder.

6. ADDITIONAL REPRESENTATIONS AND WARRANTIES OF SELLER.

A. Seller hereby represents and warrants to Buyer that all of the following are true, correct and complete on and as of the date hereof, and shall continue to be true, correct and complete as of the Closing Date:

1. Seller has no actual knowledge of (i) any orders from or agreements with any governmental authority or private party or any judicial or administrative proceedings or investigations, whether pending or threatened, respecting any environmental, health or safety requirements under federal, state or local laws or regulations relating to the Property, or (ii) any pending, asserted or threatened claims or matters involving material liabilities, obligations or costs arising from the existence, release or threatened or alleged release of any Hazardous Substances at, on or beneath the Property. "Hazardous Substances" shall mean any hazardous or toxic material, substance or waste, pollutant or contaminant which is defined as a hazardous substance or hazardous waste under any Environmental Laws (as defined below).

2. No notice from any governmental body or other person has been served upon Seller or upon the Property claiming the violation of any law or any building, zoning, environmental, health or other ordinance, code, rule or regulation relating to the Property. There are no legal actions, suits or administrative proceedings, including condemnation cases or eminent domain proceedings commenced, pending or threatened against the Property or any portion thereof. Seller has not received notice of any negotiations for purchase in lieu of condemnation relating to the Property or any portion thereof.

a. Seller is not a party to any agreement or commitment to sell, convey, assign, transfer, provide rights of first refusal or other similar rights with respect to, or otherwise dispose of, any part of the Property or any interest therein other than this Agreement. Neither Seller nor any person or entity claiming by, through or under Seller has done or suffered anything whereby any lien, encumbrance, claim or right of another has been created against the Property or any portion thereof or any interest therein other than this Agreement, the Permitted Exceptions and possible construction or materialmen's lien claims arising out of work performed by or on behalf of Seller which will be removed at or before the Closing.

b. There is no action, proceeding or investigation pending or to the best of Seller's knowledge, threatened against Seller or with respect to the Property or any portion thereof before any court or governmental or quasi-governmental department, commission, board, agency or instrumentality.

c. The signatories to this Agreement on behalf of Seller have full right, power and authority to enter into this Agreement and to consummate the transactions contemplated herein. This Agreement is valid and enforceable against Seller in accordance with its terms. Each instrument to be executed by Seller pursuant hereto or in connection herewith will, when executed and delivered, be valid and enforceable in accordance with its terms.

d. The accuracy of all Seller representations and warranties contained in this Agreement shall be a condition to Buyer's obligations under this Agreement, which condition will be merged at the time of, and will not survive, the Closing. If any of the representations or warranties contained in this Agreement is untrue in any material respect and is not cured (at no cost to Buyer) prior to the scheduled Closing, then Buyer may elect to (i) purchase the Property as it then is or, (ii) terminate this Agreement and, anything in this Agreement to the contrary notwithstanding, receive a refund of all Earnest Money.

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

7. CLOSING.

A. Provided that all conditions of closing hereunder have been satisfied or waived, the closing of the transaction described herein (the "Closing") shall occur at the offices of the Title Company on the Closing Date. The "Closing Date" shall be the Contingency Date, or such earlier or later date as may be agreed to in writing by Seller and Buyer.

B. The following shall occur on or before the Closing Date:

1. Seller shall deliver all of the following to Buyer, all of which shall be fully-executed by Seller, as appropriate:

a. A special warranty deed in the form attached hereto as Exhibit B sufficient to convey and warrant to Buyer fee simple absolute title to the Property, to extent such title is affected by Seller's actions, subject only to the Permitted Exceptions (the "Special Warranty Deed"), which Special Warranty Deed will restrict Buyer's use of the Property to the Intended Use and other uses as allowed by this Agreement, and will prohibit Buyer from discriminating in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property;

b. An affidavit of title in customary form covering the Closing Date and showing title in Seller, subject only to the Permitted Exceptions;

- c. Any required real estate sale disclosure;
 - d. Such other documents as may be necessary or proper to comply with this Agreement or required (by the Title Company or otherwise) to carry out its terms.
 2. Buyer shall deliver all of the following to Seller, all of which shall be fully-executed by Buyer, as appropriate:
 - a. The balance of the Purchase Price, plus or minus prorations, credits and other adjustments, by wire transfer or otherwise in immediately available funds;
 - b. Any required real estate sale disclosure;
 - c. Such other documents as may be necessary or proper to comply with this Agreement or required to carry out its terms.
 3. Seller shall cause the Title Company to issue to Buyer at Closing a current ALTA Form owner's policy of title insurance, with extended coverage, pursuant to the Title Commitment and containing all amendments and endorsements required by this Agreement or otherwise reasonably required by Buyer, which policy and endorsements shall be at Buyer's sole cost, and which shall only be subject to the Permitted Exceptions.
 4. Exclusive occupancy of the Property shall be delivered to Buyer at Closing, except for the continuation of any installations, equipment, or access by personnel upon the Property that Seller or Seller's representatives or contractors may require in connection with carrying out Seller's Work in accordance with the terms of this Agreement.

8. PRORATIONS; REAL ESTATE TAXES AND ASSESSMENTS; CLOSING COSTS.

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

B. At Closing, Seller shall pay the costs of releasing all liens, judgments, and other encumbrances that are to be released and of recording such releases. At Closing, Buyer shall pay (i) all fees and costs due Title Company for its closing, document preparation, and/or escrow services, (ii) the cost of the premium for the Title Policy and all endorsements to the Title Policy (iii) the cost of the Survey, (iv) the cost of any lender's policy of title insurance or endorsements thereto, and (v) the cost of recordation of any instrument associated with the transaction contemplated in this Agreement, except as provided in the foregoing sentence. Except as otherwise provided for in this Agreement,

Seller and Buyer will each be solely responsible for and bear all of their own respective expenses, including, without limitation, expenses of legal counsel, accountants, and other advisors incurred at any time in connection with pursuing or consummating the transaction contemplated herein. Any other closing costs not specifically designated as the responsibility of either party in this Agreement shall be paid by Buyer.

9. BUYER'S POST-CLOSING DEVELOPMENT OBLIGATIONS; CHANGE OF INTENDED USE.

A. Property Redevelopment; Proof of Investment. Provided Closing occurs, within ten (10) months after the Closing Date, Buyer will commence construction and redevelopment of the Property for the Intended Use and will provide Seller with such commencement date (the "Construction Commencement Date"). Buyer will expend an amount (including hard and soft costs) of not less than One Million Dollars (\$1,000,000.00) to complete the Property Improvements to redevelop the Property for the Intended Use. Promptly upon completing the Property Improvements, Buyer will submit to Seller records proving the above required expenditures and will provide to Seller copies of the certificate(s) of occupancy for the Property Improvements. Buyer shall permit Seller to perform reviews and monitor the progress of the construction of the Property Improvements. The parties expect the Property Improvements to be completed within thirty (30) months of the Construction Commencement Date (the "Completion Date"). If the Property Improvements have not been completed by the Completion Date, the Buyer shall be in default under this Agreement.

B. Certificate of Completion. Promptly after Buyer completes the Property Improvements and proves the same to Seller's reasonable satisfaction in accordance with the terms of Section 9(A) above, upon Buyer's request, Seller will issue to Buyer a certificate acknowledging such completion (the "Certificate of Completion").

C. Change of Intended Use. Buyer covenants and agrees that neither Buyer nor any of Buyer's successors or assigns will change its use of the Property from the Intended Use of the Property defined above without obtaining Seller's prior consent to such change in writing.

10. DEFAULT.

A. If Seller defaults under this Agreement, Buyer shall have any and all remedies available to it under this Agreement and otherwise at law or in equity including, without limitation: (i) the right of specific performance; (ii) the right to terminate this Agreement at any time after such default by delivering written notice of termination to Seller; and/or (iii) the right to sue for damages, provided, however, that in no event shall Seller be liable for more than One Thousand Dollars (\$1,000.00) in damages. In the event of any such termination, all Earnest Money shall be immediately returned to Buyer. All of Buyer's remedies shall be cumulative and not exclusive.

B. If Buyer defaults under this Agreement, Seller shall re-enter and take possession of the Property and to terminate and revert in Seller the estate conveyed to Buyer at Closing and all of Buyer's rights and interests in the Property without offset or compensation for the value of any improvements made by Buyer.

C. In the event Seller pursues legal action (including arbitration) to enforce or interpret this Agreement, Buyer shall pay Seller's reasonable attorneys' fees and other costs and expenses (including expert witness fees).

11. COVENANTS OF SELLER. Between the date of this Agreement and the Closing Date, Seller shall:

A. not, without first obtaining the written consent of Buyer, enter into any leases, contracts or other agreements, nor grant or permit any rights to any other party, pertaining to the Property or any portion thereof, except in relation to Seller's performance of ongoing demolition work at the Property, if any;

B. comply with all private and governmental laws, rules, ordinances, regulations, covenants, conditions, restrictions, easements, liens and agreements affecting the Property or any portion thereof including, without limitation, the use thereof; and

C. comply with all requirements of the Title Company in connection with its insurance of fee simple title to the Property in Buyer as required under Section 5 hereof and elsewhere herein.

12. NOTICES.

A. All notices, demands and communications required or which either party desires to give or make hereunder shall be effective (at the time set forth in Section 12(B)) if in writing signed by or on behalf of the party giving or making the same, and if served/delivered to the addresses and/or fax numbers set forth below and in any of the following manners: (i) personally; (ii) by United States certified mail, return receipt requested; or (iii) by a national courier service for next business day delivery.

To Seller: City of South Bend Department of Community Investment
Attn: Executive Director
County-City Building, Suite 1400 S.
227 W. Jefferson Blvd.
South Bend, IN 46601
Telephone: 574-235-9337

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

To Buyer: KCG Development LLC
Attn: Todd Jensen
9311 N. Meridian Street, Suite 100
Indianapolis, IN 46260

Either Party may, by written notice, modify its address or representative for future notices.

B. Notices given personally shall be deemed to have been given upon receipt. Notices mailed by United States mail shall be deemed to have been given on the third

business day after the date of mailing or upon receipt by either party if a written receipt is signed therefor. Notices sent by United States mail or national courier service for next day or next business day delivery shall be deemed to have been given on such next day or next business day, as the case may be, following deposit. Any party hereto may change its address for the service as aforesaid by giving written notice to the other of such change of address in accordance with the provision of this Section 12.

C. Notwithstanding any other provision of this Agreement, Seller hereby grants Buyer the following extensions to the Closing Date: Buyer may extend the Closing Date up to three (3) times for a period of thirty (30) days each by providing written notice to Seller prior to the Closing Date, as it may be extended, and depositing additional earnest money in the amount of One Hundred Dollars (\$100.00) (each as "Additional Earnest Money") with the Title Company for each such additional thirty (30) day extension. Additional Earnest Money deposited pursuant to this Section 12 is non-refundable but shall be credited against the Purchase Price.

13. MISCELLANEOUS.

A. This written Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements between the Parties regarding the Property. There are no verbal agreements which can or will modify this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the Parties.

B. The Parties acknowledge and agree that Buyer's project on the Property is a private development and hereby renounce the existence of any form of agency relationship, joint venture, or partnership between Buyer and Seller and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such.

C. No member, official, or employee of Seller or the City of South Bend, Indiana 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, limited liability company, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of Seller or the City of South Bend, Indiana shall be personally liable to Buyer, or any successor in interest, in the event of any default or breach by Buyer or for any amount which may become due to Buyer, or its successors and assigns, or on any obligations under the terms of this Agreement.

D. Buyer and Seller represent and warrant to one another that it has not engaged or dealt with any broker or other person who would be entitled to any brokerage fee or commission with respect to the finding, negotiation or execution of this Agreement or the consummation of the transactions contemplated hereby.

E. This Agreement shall be construed and enforceable in accordance with 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, unless the parties mutually agree to an alternative

method of dispute resolution. Both parties hereby waive any right to trial by jury with respect to any action or proceeding relating to this Agreement.

F. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. 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. Except for an assignment by Buyer to an entity of which Buyer has a controlling interest, Buyer may not assign its rights and obligations under this Agreement without Seller's prior written consent. In the event Buyer wishes to obtain Seller's consent regarding a proposed assignment of this Agreement, Seller may request and Buyer shall provide any and all information reasonably demanded by Seller in connection with the proposed assignment and/or the proposed assignee. The unenforceability or invalidity of any provisions hereof shall not render any other provisions herein contained unenforceable or invalid.

G. It is the intent of Buyer and Seller that this Agreement shall be binding on both parties and not illusory. Buyer and Seller acknowledge that Buyer and Seller will expend significant time, effort and expense in performing their respective obligations under this Agreement, which constitutes legally adequate consideration.

H. 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.

I. This Agreement and any and all documents and signatures relating thereto may be transmitted by electronic mail. All such documents and signatures transmitted by electronic mail shall be deemed to be originals. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same agreement.

J. Time is of the essence as to all terms and conditions of this Agreement.

K. Sections 9, 10, 12, and 13 shall survive the termination of this Agreement.

[Signatures on the following page(s)]

SELLER:

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Dated this ____ day of _____, 2023.

Marcia I. Jones, President

ATTEST:

Vivian Sallie, Secretary

BUYER:

ADVANTIX DEVELOPMENT
CORPORATION, an Indiana non-profit
corporation

By: Timothy L. Martin

Printed: Timothy L. Martin

Title: COO

Dated this ____ day of _____, 2023.

Exhibit A

Description of Property

Address: 622 W Marion
Parcel Number: 018-1055-2352
State Parcel: 71-08-02-459-001.000-026
Legal Description: LOT 5 & 6 SMITH & JACKSON SUB

Address: 620 W MARION
Parcel Number: 018-1055-2354
State Parcel: 71-08-02-459-003.000-026
Legal Description: LOT 7 SMITH & JACKSON SUB

Address: 618 W MARION
Parcel Number: 018-1055-2355
State Parcel: 71-08-02-459-004.000-026
Legal Description: LOT 8 SMITH & JACKSON SUB

Address: Marion
Parcel Number: 018-1055-235601
State Parcel: 71-08-02-459-002.000-026
Legal Description: 21.5 FT W END LOT 11 SMITH & JACKSONS SUB.

Address: 425 Leland
Parcel Number: 018-1055-2356
State Parcel: 71-08-02-459-005.000-026
Legal Description: LOT 11 EX 21.5 FT W SIDE SMITH & JACKSONS SUB.

Address: 421 Leland
Parcel Number: 018-1055-2357
State Parcel: 71-08-02-459-006.000-026
Legal Description: LOT 10 SMITH & JACKSONS SUB

Address: 419 Leland
Parcel Number: 018-1055-2358
State Parcel: 71-08-02-459-007.000-026
Legal Description: LOT 9 SMITH & JACKSONS SUB

Address: 627 Lincoln Way **W**
Parcel Number: 018-1055-2359
State Parcel: 71-08-02-459-008.000-026
Legal Description: LOTS 1 2 3 & 4 SMITH & JACKSONS SUB

Exhibit B

Form of Special Warranty Deed

SPECIAL WARRANTY DEED

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

CONVEYS AND SPECIALLY WARRANTS to Advantix Development Corporation, an Indiana non-profit corporation and/or its permitted assigns with its principal place of business at 500 SE 10th Street, Evansville, Indiana 47713 (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 located in St. Joseph County, Indiana (the “Property”):

Address: 622 W. Marion
Parcel Number: 018-1055-2352
State Parcel: 71-08-02-459-001.000-026
Legal Description: LOT 5 & 6 SMITH & JACKSON SUB

Address: 620 W MARION
Parcel Number: 018-1055-2354
State Parcel: 71-08-02-459-003.000-026
Legal Description: LOT 7 SMITH & JACKSON SUB

Address: 618 W MARION
Parcel Number: 018-1055-2355
State Parcel: 71-08-02-459-004.000-026
Legal Description: LOT 8 SMITH & JACKSON SUB

Address: Marion
Parcel Number: 018-1055-235601
State Parcel: 71-08-02-459-002.000-026
Legal Description: 21.5 FT W END LOT 11 SMITH & JACKSONS SUB.

Address: 425 Leland
Parcel Number: 018-1055-2356
State Parcel: 71-08-02-459-005.000-026
Legal Description: LOT 11 EX 21.5 FT W SIDE SMITH & JACKSONS SUB.

Address: 421 Leland
Parcel Number: 018-1055-2357
State Parcel: 71-08-02-459-006.000-026
Legal Description: LOT 10 SMITH & JACKSONS SUB

Address: 419 Leland
Parcel Number: 018-1055-2358
State Parcel: 71-08-02-459-007.000-026

Legal Description: LOT 9 SMITH & JACKSONS SUB

Address: 627 Lincoln Way W

Parcel Number: 018-1055-2359

State Parcel: 71-08-02-459-008.000-026

Legal Description: LOTS 1 2 3 & 4 SMITH & JACKSONS SUB

Grantor, as its sole warranty herein, specially warrants to Grantee, and to Grantee's successors and assigns, that Grantor will forever defend title to the Property against those claims, and only those claims, of all persons who shall claim title to or assert claims affecting the title to the Property, or any part thereof, under, by or through, or based upon the acts of Grantor, but not otherwise, subject to the all current, non-delinquent real estate taxes and assessments.

Grantor and Grantee covenant and agree that Grantor conveys the Property to Grantee subject to the requirement that Grantee, and its successors and assigns, may use the Property solely for (i) income-based, multi-family housing, and market-rate multifamily housing (ii) any other use consented to in writing by Grantor, and Grantee shall not discriminate in the lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property. This restriction will at all times be subject to any mortgages recorded against the Property, and any foreclosure or deed in lieu of foreclosure with regard to any such mortgage shall automatically without further action terminate this restriction.

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

[Signature page follows.]

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

Marcia I. Jones, President

ATTEST:

Vivian Sallie, Secretary

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

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

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 20____.

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, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 7/10/23
FROM: Joseph Molnar
SUBJECT: MOU Fat Daddy's Façade Artifacts

_____ 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: MOU allowing for Valerie Loew to make molds of the former Fat Daddy's façade artifacts.

Specifics: The RDC is in possession of façade artifacts of the former Fat Daddy's building that was authorized to be demolished in December 2018. Valerie Loew is a South Bend resident and artist who desires to use portions of the façade saved by the RDC for the purpose of casing molds for various art projects.

The attached MOU allows Ms. Loew to use the artifacts to create molds so long as no harm is done to the artifacts. Staff believes this is an opportunity to share the City's architectural history with a broader audience and aid a local artist.

City Staff recommends approval of the MOU.

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 \$ _____

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
SOUTH BEND REDEVELOPMENT COMMISSION
AND VALERIE LOEW**

This Memorandum of Understanding (this "Agreement") is made and executed between the South Bend Redevelopment Commission (the "Commission") and Valerie Loew (the "Artist"), an individual, on the 13th day of July 2023.

WHEREAS, in December 2018, the Commission authorized the demolition of a structure at the southwest corner of Michigan Street and Monroe Street in the City of South Bend (the "City"), commonly known as Fat Daddy's; and

WHEREAS, the Artist is a resident of the City and desires to use portions of the facade saved by the Commission, descriptions of which are attached as **Exhibit A** (the "Artifacts"), for the purpose of casting molds for a project; and

WHEREAS, the Commission has determined that allowing the Artist to temporarily use the Artifacts to create molds to replicate them for use in her creations is a valid public purpose and will generally serve the interests of the City's residents.

NOW, THEREFORE, the Commission and the Artist do hereby mutually agree as follows:

I. TERM

This Agreement shall be effective on July 13, 2023 and continue until July 1, 2028. The Commission reserves the right to terminate the Agreement within thirty (30) days' notice of termination to the Artist.

II. GENERAL TERMS

The Commission will allow the Artist to temporarily use the Artifacts to create molds to replicate them for use in her creations. The Artist shall return the Artifacts to the Commission upon completion of the molds. For the term of this Agreement, the Artist may re-request the temporary use the Artifacts as often as needed.

III. RESPONSIBILITIES OF THE COMMISSION

- a) The Commission authorizes Joseph Molnar of the Department of Redevelopment, or his designee, to work with the Artist with regard to the selection, receipt, and return of the Artifacts in accordance with the terms hereof.
- b) The Commission agrees to obey all applicable local, state, and federal laws and regulations pertaining to this transaction.

IV. RESPONSIBILITIES OF THE ARTIST

- a) The Artist agrees to work with Joseph Molnar or his designee to select and

- document the Artifacts.
- b) The Artist agrees to use reasonable care with the Artifacts during transport and storage and will not permanently alter or damage the Artifacts or allow anything to permanently alter or damage them while such Artifacts are in the Artist's care, custody, and control.
 - c) The Artist shall promptly return the Artifacts to Joseph Molnar or his designee upon completion of the creation of molds.
 - d) The Artist agrees to make exact replicas of the Artifacts and not to use or incorporate them in a manner that would reasonably be found offensive to the general public.
 - e) The Artist agrees to obey all applicable local, state, and federal laws and regulations.

V. ASSIGNMENT

Neither party may assign this Agreement without first obtaining written consent from the other party.

VI. ILLEGALITY

If any provision of this Agreement is found by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision that is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

VII. ENTIRE AGREEMENT

This document contains the entire agreement between the parties regarding the issue of the use of the Artifacts by the Artist and supersedes all prior negotiations, representations, or agreements, either written or oral, regarding the sole issue of the use of the Artifacts by the Artist. This Agreement shall not be amended or modified except by written instrument signed by both parties.

VIII. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Indiana and venue shall be in St. Joseph County, Indiana.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

SOUTH BEND REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Vivian Sallie, Secretary

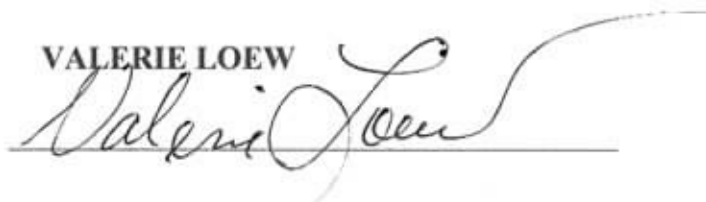
VALERIE LOEW


EXHIBIT A

Artifacts











CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 7/11/22
FROM: Joseph Molnar
SUBJECT: First Amendment to Real Estate Purchase Agreement

_____ 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: Extending Time Frame for former Fat Daddy's Site Purchase Agreement

Specifics: This First Amendment Agreement extends the closing date and contingency date for the former Fat Daddy's site Purchase Agreement. On July 14, 2022, the Commission approved a Purchase Agreement with Devereaux Peters for the sale of the site for a Low-Income Housing Tax Credit Project. The State of Indiana delayed the awarding of the tax credits until the spring of 2023 as opposed to the original timeline of November 2022.

The project was awarded the tax credits and is planning on moving forward; however, the agreement needs modified to extend the closing period and contingency period. All commitments remain the same. The planned project is a sixty (60) unit apartment building, forty-eight (48) being affordable income restricted apartments with a total investment of at least \$16 million.

Staff requests approval of this Amendment.

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 \$ _____

FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

This FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT (this “**Amendment**”) is made and entered into to be effective as of the 13th day of July, 2023, by and between South Bend Redevelopment Commission (“**Seller**”), as Seller, and The Monreaux, LLC, an Indiana limited liability company (“**Purchaser**”), as Purchaser (each a “**Party**” and collectively, the “**Parties**”).

RECITALS

A. Seller and Purchaser entered into that certain Real Estate Purchase Agreement, dated effective as of July 14, 2022 (the “**Agreement**”), for the purchase and sale of certain real property located in the in St. Joseph County, City of South Bend, State of Indiana as more particularly described in Exhibit A of the Agreement (the “**Real Estate**”). All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

B. Seller and Purchaser now desire to amend the Agreement in order to provide for an extension of the Closing date thereunder and to address certain other matters, all as set forth hereunder.

AGREEMENT

NOW, THEREFORE, in consideration of these premises, and the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. **Recitals.** The recitals set forth above, including each and every recital contained therein, are incorporated into and made a part of this Amendment as though fully set forth herein.
2. **Amendments.** The Agreement is hereby amended as follows:
 - a) Section 4 (b) shall be deleted in its entirety and replaced with the following:

In addition to any and all other conditions and contingencies in this Agreement, Buyer’s obligations under this Agreement are hereby conditioned upon Buyer’s receipt of a low-income housing tax credit (“LIHTC”) reservation from the Indiana Housing and Community Development Authority (“IHCDA”) for the Intended Use. Buyer submitted its project application on July 25, 2022. Buyer represents that IHCDA announced reservations (“Reservation”) in January and February 2023, and Buyer received a LIHTC Reservation for the Intended Use.

- b) The first sentence of Section 4 (c) shall be amended and replaced with the following:

If at any time on or before March 31, 2024 (the “Contingency Date”), Buyer determines, for any reason, in Buyer’s sole discretion, that the Property or the transaction described herein is unacceptable to Buyer, then Buyer shall have the right to terminate this Agreement by giving written notice of

termination to Seller at any time on or before the Contingency Date in which event, at Buyer's election, all Earnest Money shall be returned to Buyer ("Buyer's Contingency").

The remaining terms of Section 4 (c) under the Agreement shall remain. The Agreement is further amended throughout as necessary to provide that all references to the term "Contingency Date" shall have the meaning of March 31, 2024.

c) The last full sentence of Section 7 (a) of the Agreement shall be amended and replaced with the following:

The "Closing Date" shall be March 31, 2024, or such earlier or later date as may be agreed to in writing by Seller and Buyer.

The remaining terms of Section 7 (a) under the Agreement shall remain.

3. **Entire Agreement; Conflict.** Except as otherwise stated herein, all other terms, conditions and agreements contained in the Agreement remain unmodified and in full force and effect. The Parties hereby expressly reaffirm their respective obligations under the Agreement, and unless expressly modified by this First Amendment, the terms and provisions of the Agreement remain in full force and effect. To the extent a conflict exists between the terms of this Amendment and the Agreement, the terms of this Amendment shall control.

4. **Capitalized Terms.** Capitalized Terms used in this First Amendment will have the same meanings set forth in the Agreement, except as otherwise stated herein.

5. **Counterparts; Electronic or Facsimile Transmission.** This Amendment may be executed in counterparts which, when combined, shall constitute one instrument. The electronic or facsimile transmission of a signed counterpart of this Amendment shall be binding upon the party whose signature is contained on the transmitted copy.

[Signature Page Follows.]

IN WITNESS WHEREOF, Purchaser and Seller have executed this First Amendment to Real Estate Purchase Agreement to be effective as of the date set forth above.

“BUYER”:

The Monreaux LLC

By: _____
Devereaux Peters, its sole member

“SELLER”:

South Bend Redevelopment Commission

By: _____
Marcia I. Jones, President

Attest: _____
Vivian Sallie, Secretary



CITY OF SOUTH BEND

COMMUNITY INVESTMENT

June 11, 2023

Ms. Devereaux Peters
The Monreaux LLC
1335 Pyle Ave
South Bend, IN, 46615

RE: The Monreaux – 505 S. Michigan Street

Dear Ms. Peters,

Please accept this letter as confirmation that the property for the Monreaux located at 505-513 S. Michigan St. (Parcel IDs: 018-3017-0628, 018-3017-0629, 018-3017-0631, and 018-3017-0632) is zoned to DT Downtown Zoning District. The DT Downtown zoning classification allows for the mixed-use development.

This letter certifies that the current zoning allows for the construction and operation of the proposed development without the need for additional variances. The lot has been vacant for more than 5 years.

The City of South Bend is supportive of efforts to provide affordable housing for our residents, and we will continue to work closely with the applicant in their efforts. No additional approvals will be needed for the use.

Should you have any questions regarding this site, please feel free to contact me directly.

Sincerely,

Angela Smith
Zoning Administrator
Department of Community Investment
City of South Bend, Indiana