



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 \$ _____

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

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 THEEAST 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.]

