



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: March 11, 2024

FROM: Caleb Bauer, DCI Executive Director

SUBJECT: River Glen Office Park Purchase Agreement

_____ Pres/V-Pres

ATTEST: _____ Secretary

Date: _____

APPROVED Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

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

Purpose of Request: Approval of real estate purchase agreement for the \$3.25M purchase of the River Glen Office Park

Specifics: The Department of Community Investment requests approval of the purchase of the 5.2 Acre River Glen Office Park. The office park is comprised of three office buildings totaling roughly 74,303 square feet and accompanying surface parking lots with 292 spaces on the west bank of the St. Joseph River, opposite Howard Park.

Staff proposes the acquisition to allow for re-establishment of the traditional street grid through the site and to facilitate future redevelopment of the riverfront property. Upon closing in no more than 60 days, staff will work to design infrastructure connections, riverfront improvements, and issue a future RFP for redevelopment of the site that aligns with the principles of the recently adopted Monroe Park/Edgewater Neighborhood Plan.

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (“Agreement”) is made by and between River Glen GCND Holdings, LLC, with an address 999 Corporate Drive, Suite 210, Ladera Ranch, California 92694 (“Seller”) and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, with an address of 227 W. Jefferson Boulevard, Suite 1400 S, South Bend, Indiana 46601 (“Buyer”) (each a “Party” and together the “Parties”).

RECITALS

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

B. In furtherance of its purposes under the Act, Buyer desires to purchase from Seller certain real property located at 501 E. Monroe, 401 E. Monroe, 404 Columbia, 350 Columbia, and 348 Columbia in South Bend, Indiana, and more particularly described in attached **Exhibit A** (the “Property”).

C. The Property is situated in the River West Development Area and is set forth on the acquisition list related thereto, pursuant to Buyer’s Resolution No. 3485.

D. Seller desires to sell the Property to the Buyer in accordance with this Agreement and the Act.

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

1. OFFER AND ACCEPTANCE

A copy of this Agreement, signed by Seller, constitutes Seller’s offer to sell the Property, and once signed by Buyer, constitutes Buyer’s offer to purchase the Property on the terms stated in this Agreement. A copy signed by Buyer shall be delivered to the Seller, in care of the following representative (“Seller’s Representative”):

River Glen GCND Holdings, LLC
c/o M360 Advisors, LLC
Attn: Richard Marshall
999 Corporate Drive, Suite 210
Ladera Ranch, CA 92694

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

Caleb Bauer

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

With a copy to:

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

All the terms and conditions of this Agreement will be effective and binding upon the Parties and their successors and assigns at the time the Agreement is fully signed by Buyer and Seller (the "Contract Date").

2. PURCHASE PRICE AND EARNEST MONEY DEPOSIT

A. Purchase Price. The purchase price for the Property shall be Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) (the "Purchase Price"), payable by Buyer to Seller as described in Section 7 (the "Closing," the date of which is the "Closing Date").

B. Earnest Money Deposit. Within thirty (30) days after the Contract Date, Buyer will deliver to Meridian Title Company (the "Title Company") the sum of Three Hundred Twenty-Five Thousand Dollars (\$325,000.00), which Title Company on behalf of Seller will hold as an earnest money deposit (the "Earnest Money Deposit"). Title Company will be responsible for disposing of the Earnest Money Deposit in accordance with the terms of this Agreement. The Earnest Money Deposit shall be credited against the Purchase Price at the Closing or, if no Closing occurs, refunded or forfeited as provided below.

3. BUYER'S DUE DILIGENCE

A. Investigation. Seller acknowledges that Buyer's determination to purchase the Property requires a process of investigation (Buyer's "Due Diligence") into various matters. Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

B. Due Diligence Period. Buyer shall have a period of forty-five (45) days following the Contract Date to complete its examination of the Property in accordance with this Section 3 (the “Due Diligence Period”). Upon such written notice, the Parties may proceed to Closing prior to the expiration of the Due Diligence period described in this Section.

C. Authorizations During Due Diligence Period. During the Due Diligence Period, Seller authorizes Buyer, at Buyer’s expense, to:

(i) to enter upon the Property or to cause agents to enter upon the Property for purposes of examination; provided, however, that Buyer may not take any action upon the Property which reduces the value thereof without Seller’s express written consent, which shall not be unreasonably delayed or withheld. If Closing does not occur, Buyer shall promptly restore the Property to its condition prior to entry; and

(ii) File any application with any federal, state, county, municipal or regional agency relating to the Property for the purpose of obtaining any approval necessary for Buyer’s anticipated use of the Property. If Seller’s written consent to or signature upon any such application is required by any such agency for consideration or acceptance of any such application, Buyer may forward necessary, reasonable forms created by the governmental agency to and request from Seller such consent or signature, which Seller shall not unreasonably withhold after being reimbursed for Seller’s expenses.

D. Termination of Agreement. If at any time within the Due Diligence Period, Buyer determines, in its sole discretion, not to proceed with the purchase of the Property, Buyer may terminate this Agreement and Buyer shall be entitled to a full refund of the Earnest Money Deposit.

4. PRESERVATION OF TITLE AND CONDITION

A. After the date Seller receives a copy of this Agreement as described in Section 1, Seller shall not take any action or allow any action to be taken by others to cause the Property to become subject to any new interests, liens, restrictions, easements, covenants, reservations or other matters affecting Seller’s title (such matters are referred to as “Encumbrances”).

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

5. TITLE COMMITMENT AND SURVEY

Buyer shall obtain the Title Commitment for an owner's policy of title insurance issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company") within twenty (20) days after the Contract Date. Buyer, at its option, may obtain a survey of the Property, at its sole expense. The Property shall be conveyed to Buyer free of all encumbrances, including but not limited to mortgages, judgments, and taxes, unless otherwise waived in writing by Buyer. The Title Commitment will be issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company"). The Title Commitment shall: agree to insure good, marketable and indefeasible fee simple title to the Property in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed from the Seller to the Buyer. The Title Commitment shall further provide for issuance of a final ALTA owner's title insurance policy, with any endorsements requested by Buyer, subject only to any encumbrances waived by Buyer. Regardless of whether this transaction closes, Buyer shall be responsible for the title search charges, the cost of the Title Commitment and owner's policy. Within thirty (30) days after Buyer's receipt of the Title Commitment, Buyer shall give Seller written notice of any objections to the Title Commitment. Within thirty (30) days after Buyer's receipt of the Survey, Buyer shall give Seller written notice of any objections to the Survey. Any exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a "Permitted Encumbrance." If the Seller is unable or unwilling to correct the Buyer's reasonable, standard title and survey objections within the Due Diligence Period, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Due Diligence Period, in which case the Earnest Money Deposit shall be refunded to Buyer. If Buyer fails to so terminate this Agreement, then such objections shall constitute "Permitted Encumbrances" as of the expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to such title and survey objections.

6. SELLERS' REPRESENTATIONS AND WARRANTIES

The undersigned Seller represents and warrants to Buyer that Seller owns fee simple title to the Property and is fully empowered to sell the Property to Buyer under the terms and conditions stated in this Agreement. Seller, to the best of Seller's knowledge, represents and warrants that Seller is not a party to any litigation or administrative proceeding with respect to the Property, nor has any litigation or administrative proceeding been threatened against the Property. Additionally, Seller represents and warrants that it has disclosed to Buyer any notifications from any local, state, or federal authority regarding environmental matters pertaining to the Property. Seller shall provide Buyer a copy of all known environmental inspection reports, engineering, title, and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller's Representative.

7. CLOSING

A. Timing of Closing. Unless this Agreement is earlier terminated, the transfer of title contemplated by this Agreement (the "Closing") shall be held at the office of the Title Company on a mutually agreeable date not later than fifteen (15) days after the end of the Due Diligence Period.

B. Closing Procedure. At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller's delivery of a special warranty deed, substantially in the form attached hereto as **Exhibit B**, conveying the Property to the Buyer, free and clear of all liens, encumbrances, judgments, title defects and exceptions, except those expressly waived by Buyer, and the Title Company's delivery of the Title Commitment to Buyer in accordance with Section 5 above.

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

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

E. Seller's Due Diligence. Seller acknowledges that Seller has conducted its own due diligence and acknowledges that the Purchase Price is fair and reasonable and waives any right that Seller may have to an appraisal or to contest or challenge the validity of compensation received under this Agreement.

8. ACCEPTANCE OF PROPERTY "AS-IS"

Except as otherwise set forth herein, 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. Seller offers no such representation or warranty as to condition or fitness, and nothing in this Agreement shall be construed to constitute such a representation or warranty as to condition or fitness.

9. TAXES

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

10. COMMISSIONS

The Parties acknowledge that Seller is represented by NAI Cressy in connection with the transaction contemplated in this Agreement. Buyer is not represented by any broker. Buyer and Seller agree to indemnify and hold one another harmless from any claim for commissions, other than that owed to NAI Cressy which will be paid by Seller, in connection with the transaction contemplated in this Agreement.

11. INTERPRETATION; APPLICABLE LAW; JURISDICTION

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

12. NOTICES

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller in care of Seller's Representative, or to Buyer in care of Buyer's Representative at the respective addresses stated in Section 1 above. Either Party may, by written notice, modify the address for future notices to such Party.

13. REMEDIES

Upon any default in or breach of this Agreement by either Party, the defaulting Party will proceed immediately to cure or remedy such default within thirty (30) days after receipt of written notice of such default or breach from the non-defaulting Party, or, if the nature of the default or breach is such that it cannot be cured within thirty (30) days, the defaulting Party will diligently pursue and prosecute to completion an appropriate cure within a reasonable time. In the event of a default or breach that remains uncured for longer than the period stated in the foregoing sentence, the non-defaulting Party may terminate this Agreement, commence legal proceedings, including an action for specific performance, or pursue any other remedy available at law or in equity. All the Parties' respective rights and remedies concerning this Agreement and the Property are cumulative.

14. DISPUTE RESOLUTION; WAIVER OF JURY TRIAL

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

15. INDEMNITY

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

16. WAIVER

Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

17. SEVERABILITY

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

18. FURTHER ASSURANCES

The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

19. TIME

Time is of the essence of this Agreement.

20. ENTIRE AGREEMENT

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

21. BINDING EFFECT; COUNTERPARTS; SIGNATURES

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

22. AUTHORITY TO EXECUTE; EXISTENCE

The undersigned persons executing and delivering this Agreement on behalf of the Parties each represent and certify that they are the duly authorized representatives of the respective Parties and have been fully empowered to execute and deliver this Agreement and that all necessary action has been taken and done. Further, the undersigned representative of Seller represents and warrants that Seller is duly organized, validly existing, and in good standing under the laws of the State of Indiana.

[Signature Page Follows]

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

BUYER:

City of South Bend, Department of
Redevelopment, by and through its
governing body, the South Bend
Redevelopment Commission

By:

Marcia I. Jones, President

ATTEST:

By:

Vivian Sallie, Secretary

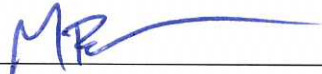
SELLER:

RIVER GLEN GCND HOLDINGS,
LLC, a Delaware limited liability
company

By: M360 Advisors, LLC, a Delaware
limited liability company

Its: Manager

By:



Name:

MATTHEW KOELLIKER

Title:

PRESIDENT

EXHIBIT A

Description of Property

Commonly Known: 501 E MONROE

Parcel ID: 018-3090-3486

State ID: 71-08-12-401-002.000-026

Legal Description: BEG 250' EAST OF COLUMBIA ST ON N SIDE OF MONROE ST CONT APPROX 67,256 SQ FT 1.44 AC SEC 12-37-2E

Commonly Known: 401 E Monroe

Parcel ID: 018-3090-3476

State ID: 71-08-12-327-004.000-026

Legal Description: Tr Of Land In Ne 1/4 Sw 1/4 Sec. 12-37-2e Beg 78.14' W Of E Boundary Of Fellow St Prov. N & Nly Boundary Of Monroe St Cont. 48569.4 Sq Ft Sec 12-37-2e

Commonly Known: 404 Columbia

Parcel ID: 018-3090-3485

State ID: 71-08-12-401-001.000-026

Legal Description: Beg At Inter Of E Boundary Of Fellows As Proj No & The No Boundary Of Monroe St Known As Parcel 6-1 Ex Parcels Sold Cont 57499.20 Sq Ft 1.32 Ac 12-37-2e

Commonly Known: 350 Columbia

Parcel ID: 018-3090-348401

State ID: 71-08-12-256-001.000-026

Legal Description: Tr Beg Inter E Right Of Way Of Columbia & N Right Of Way Monroe At A Point 270'N 75'E 43.10'Se & 113.02nely To Pob Cont 21750.05sq' Sec 12-37-2e And Being

Commonly Known: 348 Columbia

Parcel ID: 018-3090-3481

State ID: 71-08-12-178-006.000-026

Legal Description: Beg Appx 316.58' N Of Ne Cor Monroe & Columbia Known As Parcel 6-1b-B Cont Appx .811ac 35327.16 Sq Ft Sec 12-37-2e 03-04 Setup 3481a Per 11622 1-3-03

EXHIBIT B

Form of Special Warranty Deed

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

SPECIAL WARRANTY DEED

[FORM OF SPECIAL WARRANTY DEED TO BE PROVIDED BY TITLE COMPANY]

Signature Page Follows

GRANTOR:

River Glen GCND Holdings, LLC

By: _____

STATE OF _____)
) SS:
_____ COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____, known to me to be the _____ of River Glen GCND Holdings, LLC, and acknowledged the execution of the foregoing Special Warranty Deed as their true act and deed.

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

My Commission Expires:

Notary Public
Residing in _____ County, _____

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.

EXHIBIT 1

Description of Property

Commonly Known: 501 E MONROE

Parcel ID: 018-3090-3486

State ID: 71-08-12-401-002.000-026

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Commonly Known: 401 E Monroe

Parcel ID: 018-3090-3476

State ID: 71-08-12-327-004.000-026

Legal Description: Tr Of Land In Ne 1/4 Sw 1/4 Sec. 12-37-2e Beg 78.14' W Of E Boundary Of Fellow St Prov. N & Nly Boundary Of Monroe St Cont. 48569.4 Sq Ft Sec 12-37-2e

Commonly Known: 404 Columbia

Parcel ID: 018-3090-3485

State ID: 71-08-12-401-001.000-026

Legal Description: Beg At Inter Of E Boundary Of Fellows As Proj No & The No Boundary Of Monroe St Known As Parcel 6-1 Ex Parcels Sold Cont 57499.20 Sq Ft 1.32 Ac 12-37-2e

Commonly Known: 350 Columbia

Parcel ID: 018-3090-348401

State ID: 71-08-12-256-001.000-026

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Commonly Known: 348 Columbia

Parcel ID: 018-3090-3481

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