

EXECUTION COPY
12/07/15

CREDIT FACILITY AGREEMENT
CONCERNING PRE-DEVELOPMENT AND STATE STREET PROPERTY
ACQUISITION EXPENSES FOR
THE STATE STREET REDEVELOPMENT PROJECT

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This Credit Facility Agreement (hereinafter “Agreement”) is made by and among the Purdue Research Foundation (hereinafter “PRF”), the Joint Board organized under that certain Interlocal Cooperation Agreement dated as of March 12, 2014 (the “Original Interlocal Agreement”), as amended by the First Supplement to the Interlocal Agreement dated as of May 19, 2015 (the “First Supplement to the Interlocal Agreement and, together with the Original Interlocal Agreement, the “Interlocal Agreement”) by and between the City of West Lafayette (hereinafter the “City”) and The Trustees of Purdue University (hereinafter the “University”), (the “Joint Board”), and the West Lafayette Redevelopment Commission (hereinafter “RDC”) concerning the Project (as defined herein). PRF, the Joint Board and the RDC are sometimes referred to individually herein as a “Party,” or collectively as “the Parties.” This Agreement shall be effective as of November ___, 2015.

WHEREAS, on December 2, 2013, the City approved the Original Interlocal Agreement in connection with the then recent relocation of U.S. 231 to the west of the City and the proposed annexation by the City of lands occupied by the University and PRF, and it approved the First Supplement on May 19, 2015; and

WHEREAS, by a resolution adopted at a meeting held on January 28, 2014, the Executive Committee of the Board of Trustees of the University approved the Original Interlocal Agreement, and the Board of Trustees approved the First Supplement on May 15, 2015; and

WHEREAS, pursuant to the terms of the Interlocal Agreement, the City and the University established the Joint Board in order to provide an administrative framework for ongoing collaboration on matters of mutual interest, common benefit and shared responsibility following the annexation; and

WHEREAS, one such opportunity for beneficial collaboration is the proposed redevelopment of State Street (formerly State Route 26) from the Wabash River through the City’s downtown and the University’s campus to U.S. 231 on the west (the “Project”) to be undertaken by the Joint Board under the terms of the Interlocal Agreement; and

WHEREAS, it has been determined that the preferred method to develop, design, build, finance and operate the Project is through a public-private partnership involving a private Developer pursuant to a PPA between the Joint Board and the Developer under Indiana’s BOT Statute; and

WHEREAS, the City, the University, PRF and the RDC have entered into that certain Project Development Agreement effective as of May 20, 2015, as amended by the Parties _____, 2015 (hereinafter, collectively, the “PDA”) concerning the Project, under the terms of which PRF is to make available to the Joint Board and/or the RDC credit facilities in a total amount not exceeding \$67.2 million, unless modified by the Parties in accordance with Section 2.3 of the PDA in part to provide a form of bridge funding to cover certain Pre-Development Expenses of the Project; and

WHEREAS, PRF has also agreed to make available to the RDC until the ROW Expiration Date as defined below up to \$3.0 million in funds from this credit facility to provide bridge funding for State Street Property acquisition expenses needed for the Project; and

WHEREAS, PRF has a shared interest in the objectives of the Project and in the expected benefits described above, and it therefore desires to participate in the effort to advance the Project in the manner described in the PDA and consistent with its mission; and

WHEREAS, the Parties desire to document and define their respective roles, rights, responsibilities and obligations with respect to an initial interim credit facility that will provide bridge funding for Pre-Development Expenses and State Street Property acquisition costs incurred in connection with the Project; and

WHEREAS, the Parties (as applicable) have obtained the necessary approvals of their governing bodies and have otherwise met all conditions precedent to entering this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual agreements set forth herein, the Parties agree as follows:

Article 1. Definitions of Terms and List to Acronyms Used.

- 1.1. Capitalized terms used but not otherwise defined in this Agreement have the meanings ascribed to them in the PDA. In the event capitalized terms in this Agreement are inconsistent with Capitalized terms in the PDA the PDA shall control.
- 1.2. As used herein, the following capitalized terms have the following respective meanings:
 - 1.2.1. “Account” has the meaning set forth in Article 2 of this Agreement.
 - 1.2.2. “Approving Official” means either the Secretary and Treasurer of the Joint Board or the Disbursing Officer who did not initiate a

Draw Request for funding to PRF under this Credit Facility Agreement.

- 1.2.3. “Disbursing Officer” means, for purposes of this Agreement (but not for purposes of the PDA), the Treasurer of the RDC.
- 1.2.3. “Maximum Amount” has the meaning set forth in Article 3 of this Agreement.
- 1.2.4. “ROW Expiration Date” means the later to occur of (a) May 31, 2016 or (b) 30 days following the Financial Close.
- 1.2.5 “Sub-Account” means that portion of the Account that contains commitment fees assessed and amounts drawn on the credit facility by the Joint Board or the RDC for Pre-Development Expenses and State Street Property acquisition costs respectively.

Article 2. Establishment of Account. Under the terms and conditions set forth, in this Agreement, PRF agrees to establish a non-revolving line of credit in a Credit Facility Account (hereinafter “Account”) in favor of the Joint Board and the RDC, under which PRF agrees (a) to permit the Joint Board and the RDC to make draws from time to time up to its Maximum Amount (defined below) in accordance with the terms of Sections 5.4.2.1 and 5.4.2.2 of the PDA to cover Pre-Development Expenses and to interim fund certain State Street Property acquisition costs, and (b) to debit the Account for the amount of each draw and any related interest charges and fees as provided in this Agreement. PRF shall further segregate draws on the Account into a Joint Board Sub-Account and a RDC Sub-Account covering Pre-Development Expenses and State Street Property acquisition costs, respectively.

Article 3. Maximum Amount. The maximum amounts of credit made available to the Joint Board and the RDC under this Agreement shall be \$10,000,000 and \$3,000,000 respectively, plus any accrued interest and fees (the Maximum Amount”).

Article 4. Availability of Funds. Until the Financial Close the Joint Board and until the ROW Expiration Date the RDC may draw sums from this Account for their respective Sub-Accounts up to their respective Maximum Amounts.

Article 5. Draws. The Joint Board and the RDC may make draws on the Account up to their respective Maximum Amounts for purposes of (a) providing funding for the Pre-Development Expenses, including reimbursing the University and PRF for such expenses advanced by them, and (b) providing funding for State Street Property acquisition costs.

Article 6. Draw Procedure. PRF shall make advances on the Account: (a) to the Joint Board (for Pre-Development Expenses as contemplated in Section 5.4.2.1 of the PDA) through its Secretary and Treasurer, and (b) to the RDC (for State Street Property acquisition costs as contemplated in Section 5.4.2.2) through the Disbursing Officer, in

each case in accordance with all terms and conditions of this Agreement, the PDA and the PRF PIPC Loan Fund Terms and Conditions. Each such advance shall be made upon PRF's receipt, at least 10 days before the date the amount is to be drawn, of a fully executed, written Draw Request (Form Attached as Exhibit 1) with supporting information in form and content satisfactory to PRF. In addition and prior to submission of a Draw Request to PRF for funding, the Secretary and Treasurer or the Disbursing Officer, as the case may be, shall obtain the written approval of the Approving Official in the space provided on the Draw Request. Account advances by PRF and payments to or on behalf of the Joint Board or the RDC shall be recorded by PRF on its books and records to the appropriate Sub-Account, and the principal amount outstanding from time to time, plus interest payable thereon, shall be determined from the books and records of PRF. The books and records of PRF shall be presumed prima facie correct as to such matters, absent manifest error.

Article 7. Commitment Fee. The Joint Board and RDC shall pay PRF, as part of the consideration for the obligation to create and maintain the Account and permit the draws thereon as described above, a commitment fee of twenty basis points per annum on PRF's commitment. The amount on which the fee is computed shall be the total amount committed of \$10,000,000 (Joint Board) and \$3,000,000 (RDC) less the aggregate amount drawn and advanced to the Joint Board and the RDC on the Account, and the amount shall be adjusted to the dates of any advances in computing the fee to be accrued and paid. Commitment Fees shall be assessed and debited to each Sub-Account on June 30 of each year, and shall draw interest thereafter at the Article 8 Interest Charge and be repaid by the Joint Board and the RDC in accordance with terms of Article 10 of this Agreement.

Article 8. Calculations of Interest Charge. Outstanding balances in the Account will bear interest at a variable rate that will be established on June 30 of each year as provided in the Terms and Conditions of PRF PIPC Loan Fund governing the Account (attached and incorporated herein), with such rate to equal the one-year U.S. Treasury bill rate plus 250 basis points.

Article 9. Periodic Statement. PRF will provide the Joint Board, the RDC and the Disbursing Officer with a statement as of the beginning of each calendar quarter in which there is any unpaid balance under this Agreement. The statement will include the unpaid Sub-Account balances at the beginning and end of the period; an identification of all Draw Requests received and honored and the date of each; any payments made by or on behalf of the Joint Board or RDC or other credits to the Joint Board or RDC during the period; the amount of any interest charge on the Account; and, the amount of any Unused Line Fees.

Article 10. Repayment. Draws by the Joint Board made for the purpose of reimbursing Pre-Development Expenses, together with accrued interest and fees, shall be refinanced with the Developer and repaid at Financial Close, such that an amount corresponding to such expenses will be wrapped into and financed within the availability payment structure for the Project. Any draws on the facility by the RDC for State Street

Property acquisition costs, accrued interest and fees shall be repaid promptly in full by the RDC (and in no event later than December 31, 2017).

Article 11. Prepayment. The Joint Board or the RDC may pay any part or all of the unpaid balance on its respective Sub-Account at any time. No prepayment charge will be imposed for any prepayment.

Article 12. Representations and Warranties.

12.1. The Joint Board makes the following representations and warranties to PRF:

12.1.1. The Joint Board is an administrative body created pursuant to Section 4 of the Interlocal Agreement between the City and the University and is charged with undertaking the Project.

12.1.2 The Joint Board has approved the execution and delivery of this Agreement by Joint Board and authorized its performance of its obligations hereunder.

12.1.3 The Joint Board is authorized to borrow under this Agreement, to execute and deliver Draw Requests and otherwise to perform the obligations to this Agreement; has full power and authority to conduct its business as it is currently carried on; and the performance of its obligations and its issuance of any Draft Request under this Agreement will not conflict with any provision of law.

12.1.4. As of the date of this Agreement, the Joint Board is not aware of any environmental, archeological, or hazardous materials on or near the Project that requires remediation.

12.1.5. The Joint Board is not aware of any pending litigation relating to the Project.

12.2. PRF makes the following representations and warranties to the RDC:

12.2.1. PRF is a private, nonprofit corporation established to support the University in its teaching, research and public service missions.

12.2.2. The Loan Committee created by PRF's Board of Directors has approved the execution and delivery of this Agreement by PRF and authorized its performance of its obligations hereunder, including without limitation, ability to make advances to the Joint Board and the RDC up to the Maximum Amount as defined herein.

12.2.3. As of the date of this Agreement, PRF is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation.

12.2.4. PRF is not aware of any pending litigation relating the Project.

12.3. The RDC makes the following representations and warranties to the other Parties:

12.3.1. The RDC is the governing body of the West Lafayette Redevelopment District (the "District") pursuant to I.C. 36-7-14-1 *et seq.* (the "Act), which district is a duly constituted special taxing district validly existing under the act.

12.3.2. The RDC has approved the execution and delivery of this Agreement by RDC and authorized its performance of its obligations hereunder.

12.3.3. The RDC is authorized to borrow under this Agreement, to execute and deliver Draw Requests and otherwise to perform the obligations to this Agreement; has full power and authority to conduct its business as it is currently carried on; and the performance of its obligations and its issuance of any Draft Request under this Agreement will not conflict with any provision of law.

12.3.4. As of the date of this Agreement, the RDC is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation.

12.3.5. The RDC is not aware of any pending litigation relating to the Project.

Article 13. General Matters.

13.1. Liability Between the Parties. Except to the extent set forth in this Agreement, the Parties shall not be liable to each other for claims and/or actions (whether alleging negligence, breach of contract, strict liability, warranty, breach of professional services or otherwise) relating to the quality, suitability, operability or condition of any design, construction, operation or maintenance of any portion of the Project, and each Party expressly disclaims any and all express or implied representations or warranties with respect thereof, including any warranties of suitability or fitness for use. The limitation of liability provided herein shall not apply to damages to the extent covered and paid for by insurance, and damages to

the extent paid for by a responsible party (other than a Party to this Agreement) pursuant to applicable federal and state environmental laws.

13.2. Amendment and Assignment. This Agreement may be further amended, supplemented, or modified only by a written document executed by the Parties. With respect to non-substantive matters, any such amendment, supplement or modification may be given effect by the Parties acting through their duly authorized representatives, without the need for further action by their respective governing bodies. Except as otherwise provided herein, neither this Agreement nor any of the rights, duties, or obligations described herein shall be assigned by any Party hereto without the prior express written consent of the other Parties, and such consent shall not be unreasonably withheld so long such assignment is consistent with the purposed of this Agreement.

13.3. Notice to Parties.

As to Joint Board: Chair
 Joint Board
 Morton Community Center
 222 North Chauncey St.
 West Lafayette, IN 47906

With a copy to: Richard C. Starkey
 Barnes & Thornburg
 11 South Meridian Street
 Indianapolis, IN 46204-3535

As to RDC: President
 West Lafayette Redevelopment Commission
 Morton Community Center
 222 North Chauncey Street
 West Lafayette, IN 47906

With a copy to: Thomas L. Brooks, Jr.
 Mayfield and Brooks, LLC
 8 N. 3rd Street, Suite 405
 P. O. Box 650
 Lafayette, IN 47902

As to PRF: Scott W. Seidle
 Senior VP Finance and Investments
 Kurz Purdue Technology Center
 1281 Win Hentschel Blvd.
 West Lafayette, IN 47906

With a copy to: David A. Starkweather
Stuart & Branigin LLP
300 Main Street
P. O. Box 1010
Lafayette, IN 47902-1010

- 13.4. No Third Party Beneficiaries: State Sovereignty. This Agreement is entered into solely for the benefit of the Parties hereto and, to the extent provided herein, their respective directors, officers, employees, agents and representatives, and it does not grant any rights to any party except the Parties hereto. No provision in this Agreement shall be deemed to confer upon other persons any remedy, claim, reimbursement, cause of action or other right. Nothing in this Agreement shall be deemed to create or give rise to any right of action in, or any liability to, any third party claiming to have suffered a loss, damage or injury by virtue of any alleged failure by any Party hereto to comply with the terms of this Agreement.
- 13.5. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue. This provision shall not be interpreted to materially alter the relationships of the Parties as set forth in this Agreement or materially affect the ability of the Parties to achieve the purpose of this Agreement.
- 13.6. Limitation on Recourse. No recourse shall be had for the payment or performance of any obligation or covenant in this Agreement, or for any claim against a Party to this Agreement, personally against any past, present or future director, trustee, member, officer, employee, agent or official of any of the Parties under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such personal liability is hereby expressly waived.
- 13.7. Entire Understanding. This Agreement, when interpreted in a manner consistent with the terms and conditions of the PDA, sets forth the entire understanding and agreement of the Parties hereto with respect to the transactions contemplated hereby and supersedes any and all prior agreements, arrangements, and understandings among the Parties relating to the subject matter hereof.
- 13.8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An electronically transmitted duplicate signature of any Party shall be considered to have the same binding effect as an original signature.

- 13.9. Non-Waiver of Rights. The failure of a Party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances.
- 13.10. Cooperation Among the Parties. Approvals and consents required by any Party shall not be unreasonably withheld, conditioned or delayed.
- 13.11. Time is of the Essence. The times for performance provided for in this Agreement are essential due to the obligations and expenditures of the Parties. If a time is not specified, performance shall be required promptly and with due regard to the conditions of performance of other Parties in reliance thereon.
- 13.12. Continued Access to Consultants and Advisors. The Parties will cooperate and put such arrangements or contracts in place to ensure their continued mutual access to consultants that are deemed to be shared resources of the Project.
- 13.13. Term. This Agreement shall remain in full force and effect until the earlier to occur of (i) the payment of all sums due and owing PRF as provided by Section 4.2.3 of the PDA, and by Article 10 of this Agreement or (ii) the written mutual agreement of the Parties.
- 13.14. Opinions. The Parties shall, in consultation with their legal and financial advisors, obtain such legal opinions with respect to the matters contemplated by this Agreement as they shall mutually deem necessary or desirable for the success of the Project.

JOINT BOARD UNDER THE
INTERLOCAL COOPERATION
AGREEMENT BETWEEN THE CITY OF
WEST LAFAYETTE AND THE
TRUSTEES OF PURDUE UNIVERSITY

By:
Title:

WEST LAFAYETTE REDEVELOPMENT
COMMISSION

President

Attest:

Secretary

PURDUE RESEARCH FOUNDATION

By:
Title:

EXHIBIT 1

CREDIT FACILITY DRAW REQUEST

TO: Purdue Research Foundation (“Foundation”)
Kurz Purdue Technology Center
1281 Win Hentschel Boulevard
West Lafayette, Indiana 47906

Date: _____

ATTN: Scott W. Seidle
Senior Vice President of Finance and Investments

On _____, 20____ (“Effective Date”) the undersigned, being the Secretary and Treasurer of the Joint Board organized under that certain Interlocal Cooperation Agreement dated as of March 12, 2014, as the same has been amended and supplemented from time to time, (the “Interlocal Agreement”) by and between the City of West Lafayette (“City”) and The Trustees of Purdue University (“University”), **or** the Disbursing Officer for the City and the West Lafayette Redevelopment Commission (“RDC”), and pursuant to the Project Development Agreement concerning the State Street Redevelopment Project effective as of May 20, 2015, as the same has been amended and supplemented from time to time, (the “PDA”) by and between the City, the University, the RDC and the Foundation providing for a TIF Support Facility (as defined in the PDA) and the Credit Facility Agreement Concerning Pre-Development and State Street Property Acquisition Expenses for the State Street Redevelopment Project (“CFA”) dated November, 2015 to which this form of Credit Facility Draw Request (“Draw Request”) is Attachment A hereby requests that the Foundation advance loan funds in the amount of _____ (\$ _____) to the Joint Board to reimburse the Joint Board and through it the University for Pre-Development Expenses (as defined in the PDA) **or** to the Disbursing Officer to enable the RDC to purchase State Street Property (as defined in the PDA) all in support of the Project.

In support of said Draw Request the undersigned further certifies as follows:

1. he/she is the duly acting [Secretary and Treasurer/Disbursing Officer] of the [Joint Board/RDC] and authorized to borrow the funds from the Foundation requested hereunder;
2. the amount sought is true and accurate and represents expenses incurred by the [University/ RDC] for [Pre-Development Expenses/State Street Property acquisition costs] in support of the Project;
3. all funds advanced by the Foundation to the [Joint Board/RDC] hereunder shall bear interest from the Effective Date hereof until the date of repayment as provided in Article 10 of the CFA;

4. all funds advanced by the Foundation to the [Joint Board/RDC] hereunder plus all accrued interest thereon shall be fully and timely repaid to the Foundation in accordance with Article 10 of the CFA; and,
5. in the event any funds advanced by the Foundation hereunder are not fully and timely repaid when due the Foundation shall, pursuant to Article 10 of the CFA, be entitled assert a delinquent charge in the amount provided for therein.

By: _____

Printed

Title: [Secretary and Treasurer/Disbursing Officer]

- Joint Board
- West Lafayette Redevelopment Commission
Morton Community Center
222 North Chauncey Street
West Lafayette, IN 47905

Fund Transfer Information

Approved: _____

Printed

[Secretary and Treasurer/Disbursing Officer]

- Joint Board
- West Lafayette Redevelopment Commission
Morton Community Center
222 North Chauncey Street
West Lafayette, IN 47905