



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: June 13, 2019

FROM: David Relos, Property Development Manager

SUBJECT: Real Estate Purchase Agreement (Fat Daddy's)

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

PURPOSE OF REQUEST:

This Real Estate Purchase Agreement (Agreement) is for what is commonly known as Fat Daddy's in the 500 block of S. Michigan St. This property was taken through the disposition process in July 2017, with one bid received by Commonwealth Development Corp. that was dependent on receiving State tax credits. The tax credits were not awarded and the Agreement terminated.

This new Agreement is similar to the 2017 Agreement, except instead of trying to save the building's two historic facades, salvaged parts of the facades will try to be incorporated in the new construction, which is expected to be four stories with approximately 60 one and two bedroom units for seniors.

The Agreement includes:

- Purchase price of \$45,000 (original minimum offering price)
- Contingent on the awarding and placement of State low income housing tax credits
- City Planner approval of the new building
- Building completion within three years
- Private investment of \$8,300,000

Staff requests approval of this Real Estate Purchase Agreement with Commonwealth Development Corp.

INTERNAL USE ONLY: Project Code: _____ N/A _____ ;
 Total Amount new/change (inc/dec) in budget: _____ ; Breakdown: _____
 Costs: Demolition 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? N
 Is this item ready to encumber now? No 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 May ___, 2019, 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 Commonwealth Holdings, LLC, a Wisconsin limited liability company and/or its assigns ("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 505, 507, 511 and 513 S. Michigan Street, 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. 3397 on June 29, 2017, whereby Seller established an offering price of Forty-Five Thousand Dollars (\$45,000.00) (the "Appraised Value") for the Property.

D. Pursuant to the Act, on June 29, 2017, Seller authorized the publication, on July 7, 2017, and July 14, 2017, respectively, of a notice of its intent to sell the Property and its desire to receive bids for the Property on or before July 27, 2017.

E. As of July 27, 2017, Seller had received one (1) proposal for the purchase and redevelopment of the Property ("Buyer's Bid"), which Buyer timely submitted in accordance with Seller's published notice. At its public meeting on July 27, 2017, Seller opened and read aloud Buyer's Bid, which contained an offer to purchase the Property for Forty-Five Thousand Dollars (\$45,000.00) and a proposal to redevelop the Property into a senior housing project incorporating the existing building façades into a newly constructed building. On August 10, 2017, Seller accepted Buyer's Bid, subject to a written agreement between the parties, which was entered into on September 14, 2017. Subsequently, Buyer terminated the agreement on March 22, 2018 pursuant to the contingency clause conditioning Buyer's obligations upon its receipt of a low income housing tax credit, and Seller returned Buyer's earnest money pursuant to the terms of that agreement.

F. Buyer has the opportunity to re-apply for low income housing tax credits and desires to enter into a substantially similar 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 that certain parcel 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 Forty-Five Thousand Dollars (\$45,000.00) (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 Four Thousand Five Hundred Dollars (\$4,500.00) (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 for seniors (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 30, 2019 and announce reservations ("Reservation") on or about November 1, 2019, but in no event later than November 30, 2019. 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 sixty (60) days 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 July 30, 2020 (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 immediately 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.

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 historic masonry that has been preserved will be incorporated into the new building (the "Construction Plan"). Buyer agrees to cooperate with the City Planner for the City of South Bend, Indiana (the "City Planner") in developing its Construction Plan. Unless the City Planner approves, in the City Planner's sole discretion, the following elements of the Construction Plan, Seller will have no obligation to close the transaction contemplated by this Agreement: (i) exterior building materials, including color and integration of the preserved historic masonry features previously installed at the site (if any); (ii) exterior building design, including roofline, building articulation, and placement and type of windows, doors, and other openings; (iii) ground floor interaction with street frontages; and (iv) vehicular and pedestrian access. If Buyer fails to obtain the City Planner's approval of the foregoing elements of the Construction Plan before the Contingency Date, this Agreement will terminate, neither party will be required to close the transaction contemplated herein, Seller will return the Earnest Money to Buyer, and Seller will have no liability to Buyer for Buyer's costs, expenses, or losses in connection to this Agreement.

5. TITLE INSURANCE; SURVEY. Within thirty (30) days of the Acceptance Date, Seller, at Buyer's sole cost, shall deliver a written commitment of First American Title or another

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:

(i) 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).

(ii) Except as reflected in the Property Information, to Seller's actual knowledge, without further inquiry or investigation: (a) the Property has at all times been operated in accordance with all Environmental Laws; (b) no Hazardous Substances have been treated, recycled, transported, stored or disposed of (intentionally or unintentionally) on, under or at the Property; (c) the Property has never appeared on any federal or state registry of active or inactive hazardous waste sites; (d) there has been no release or threatened release of any Hazardous Substances from, at or to the Property; (e) there have not been nor are there now any Hazardous Substances present on, at, in, upon or migrating to or from the Property; (f) there have been no activities on the Property that would subject Buyer to damages, penalties, injunctive relief or cleanup costs under any Environmental Laws or common law theory of liability; (g) no property adjacent to the Property has ever been used for the treatment, recycling, transportation, storage or disposal (intentional or unintentional) of Hazardous Substances nor has there been a release or threatened release of any Hazardous Substances from such adjacent property; and (h) there are no, and have not ever been any, underground storage tanks or wells on, at or beneath the Property. "Environmental Laws" shall mean any past, present or future international, federal, state or local statute, law, regulation, order, consent, decree, judgment, permit, license, code,

covenant, deed restriction, ordinance or other requirement relating to public health, safety or the environment, including, without limitation, those relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, or to the use and handling of Hazardous Substances.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(b) 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.

(c) 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. At Buyer's option, the Closing shall take place as an escrow closing, with the Title Company acting as the closing escrow agent. The "Closing Date" shall be August 31, 2020, 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:

(i) 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] Four copies of the closing statement;

[e] a sworn affidavit stating Seller's Federal Employer Identification Number or Social Security Number and that Seller is not a foreign person for purposes of the Foreign Investors Real Property Tax Act of 1980, as amended, and as decided in Section 1445 of the United States Internal Revenue Code of 1986, as amended, and the regulations applicable thereto (the "FIRPTA Affidavit"); and if Seller fails to furnish a FIRPTA Affidavit, Buyer may withhold from the Purchase Price an amount sufficient to comply with the provisions of Section 1445 of the United States Internal Revenue Code of 1986, as amended, and the regulations applicable thereto;

[f] 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.

(ii) 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] Four copies of the closing statement; and

[d] Such other documents as may be necessary or proper to comply with this Agreement or required to carry out its terms.

(iii) 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.

(iv) 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 Eight Million Three Hundred Thousand Dollars (\$8,300,000.00) to complete the Property Improvements to redevelop the Property for the Intended Use, including the incorporation of historic masonry features into the new building in accordance with the Construction Plan. 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 twenty-four (24) 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, provided, however, that the Property may be used for market-rate multifamily housing by giving written notice to Seller without the necessity of obtaining Seller's written consent to such change.

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 Forty-Five Thousand Dollars (\$45,000.00) 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 have any and all remedies available to it under this Agreement including the following: (i) the right to terminate this Agreement at any time after such default by delivering written notice of termination to Buyer; and/or (ii) the right to sue for damages provided, however, Buyer shall not be liable for more than Two Hundred Thousand Dollars (\$200,000.00) in damages. All of Seller's remedies shall be cumulative and not exclusive.

11. EMINENT DOMAIN.

(a) In the event, after the Acceptance Date and prior to the Closing Date, an eminent domain action is commenced or threatened against any portion of the Property, Buyer may elect to (i) terminate this Agreement (in which event Buyer and Seller shall be released from any further obligation or liability hereunder); or (ii) consummate this transaction and request that Seller deliver to Buyer a duly executed assignment of Seller's right, title and interest in and to any awards or compensation paid by the governmental authority in connection with an eminent domain action, which request Seller may accept or reject in its sole discretion.

(b) Buyer shall have thirty (30) days from the date of its receipt of written notice of institution of proceedings within which to exercise its rights under Section 11(a) hereof. If the Closing Date is scheduled to occur within such thirty (30) day period, the Closing shall be

delayed until Buyer makes such election, and if Buyer elects to consummate the transaction, the Closing Date shall be adjusted accordingly and Buyer shall be entitled to settle the loss with the governmental entity and to participate in the eminent domain proceeding and receive awards as the case may be.

12. 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.

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

To Buyer: Commonwealth Development Corporation of
America
Attn: Kevin McDonell
7447 University Avenue, Suite 210
Middleton, WI 53562
Telephone: 608-709-5677

Telefax: 608-709-5677
Email: k.mcdonell@commonwealthco.net

With a copy to:

Lance E. Mueller
PO Box 1658
Fond du Lac, WI 54936
Telephone: (920) 579-0418
Email: l.mueller@commonwealthco.net

(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 Five Thousand and 00/100 Dollars (\$5,000.00) (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 13 is non-refundable but shall be credited against the Purchase Price.

14. 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) In the event of a default under this Agreement, the non-defaulting party hereto shall be entitled to recover reasonable costs and attorneys' fees incurred by the non-defaulting party as a result of such default.

(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 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, 13, and 14 shall survive the termination of this Agreement.

[Signatures on the following page(s)]

SELLER:

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Dated this ___ day of _____, 2019.

Marcia I. Jones, President

ATTEST:

Quentin Phillips, Secretary

BUYER:

COMMONWEALTH HOLDINGS, LLC

By: Commonwealth Companies, Inc., its sole
member

Dated this 22nd day of May, 2019.

By: 
Louie A. Lange III, Vice President

Exhibit A

Description of Property

PARCEL I: Lot Numbered Nineteen (19) in Martin's Addition to the City of South Bend,
EXCEPT the West 33 feet.

PARCEL II: The North 2/3 of Lot Numbered Twenty (20) as shown on the recorded Plat of
Samuel Martin's Addition to the Town, now City of South Bend.

PARCEL III: The South One-third (1/3) of Lot Numbered Twenty (20) as shown on the recorded
Plat of Samuel Martin's Addition to the City of South Bend, recorded in Plat Book 3, page 28 in
the Office of the Recorder of Saint Joseph County, Indiana.

PARCEL IV: Lot Numbered Twenty-one (21) as shown on the recorded Plat of Samuel Martin's
Addition to the City of South Bend, recorded in Plat Book 3, page 28 in the Office of the
Recorder of Saint Joseph County, Indiana, together with the North Half of the vacated alley lying
South and adjacent to said Lot.

Parcel Key Numbers 018-3017-0628, 018-3017-0629, 018-3017-0631, and 018-3017-0632

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 Commonwealth Holdings, LLC, a Wisconsin limited liability company and/or its permitted assigns with its principal place of business at PO Box 1658, Fond Du Lac, Wisconsin 54936 (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: Lot Numbered Nineteen (19) in Martin's Addition to the City of South Bend, EXCEPT the West 33 feet.

PARCEL II: The North 2/3 of Lot Numbered Twenty (20) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend.

PARCEL III: The South One-third (1/3) of Lot Numbered Twenty (20) as shown on the recorded Plat of Samuel Martin's Addition to the City of South Bend, recorded in Plat Book 3, page 28 in the Office of the Recorder of Saint Joseph County, Indiana.

PARCEL IV: Lot Numbered Twenty-one (21) as shown on the recorded Plat of Samuel Martin's Addition to the City of South Bend, recorded in Plat Book 3, page 28 in the Office of the Recorder of Saint Joseph County, Indiana, together with the North Half of the vacated alley lying South and adjacent to said Lot.

Parcel Key Numbers 018-3017-0628, 018-3017-0629, 018-3017-0631, 018-3017-0632

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 following: (i) those matters listed on Exhibit 1 attached hereto and made a part hereof; and (ii) 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 for seniors, (ii) upon written notice to but without consent of Grantor, market-rate multifamily housing and (iii) 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:

Quentin Phillips, 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 Quentin Phillips, 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. Sandra L. Kennedy.

This instrument was prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

EXHIBIT 1
PERMITTED EXCEPTIONS