



Department of
Community Investment

Memorandum

July 18, 2014

TO: Redevelopment Commission
FROM: Jitin Kain *JK*
SUBJECT: Façade Easement Agreement with Catalyst ONE, LLC

Attached to this memorandum is a Façade Easement agreement with Catalyst ONE, LLC for the façade of the first two buildings in the multi-tenant campus at Ignition Park.

On March 27, 2014, the Commission approved a Development Agreement with Great Lakes Capital for the construction of three buildings as part of a multi-tenant building campus. Through this agreement, the Commission committed resources in the amount of \$2.7 Million for three buildings. Buildings 1 and 2 are currently under construction.

Project engineers estimate that construction management fee, site utility work, and other site improvements (curbs, sidewalks, landscaping, etc) for Buildings 1 and 2 will cost roughly \$1.5 Million. This leaves roughly \$300,000 out of the allocated project budget of \$1.8 Million for the two buildings. Staff is recommending that this remainder be used towards façade work on both the buildings.

Staff requests approval of the attached Façade Easement Agreement with Catalyst ONE.



FAÇADE EASEMENT AGREEMENT

This Façade Easement Agreement (“Agreement”) is made and given on the ____ day of January, 2015, by and between the South Bend Redevelopment Commission (“Grantee”) and Catalyst ONE, LLC (as successor in interest to certain rights of Great Lakes Capital Development, LLC, an Indiana limited liability company (“Grantor”) (collectively the “Parties”).

STATEMENT OF FACTS

- A. Grantor is the owner in fee simple of the real property more fully described on the attached Exhibit “A” (“Property”) and is undertaking the construction of two separate commercial structures on such Property, located in Ignition Park, in the City of South Bend, Indiana (hereinafter referred to as the “Buildings”).
- B. Grantor is giving this Façade Easement (“Façade Easement”) to the Grantee to impose certain restrictions regarding the aesthetics of the Façade on the Buildings and to assist Grantee with its desire to preserve and maintain the designated character of the Buildings and of Ignition Park.
- C. The Façade of the Buildings which is to be constructed and owned by Grantor and which will be the subject matter of this Agreement, is depicted and illustrated on Exhibit “B-1” (for one building) and Exhibit “B-2” (for the other building) (each, a “Façade”).
- D. It is the specific intention of the Parties hereto to exclude the interior and other parts of the Buildings and Property (other than the Façade of each Building) from this Façade Easement.
- E. Grantor desires to give to Grantee and Grantee desires to accept the Façade Easement.

Based upon the mutual promises contained herein, the Parties agree as follows:

1. Incorporation of Statement of Facts. The Statements of Facts are incorporated into the operative provisions of this Agreement as if fully set out herein.

2. Consideration. In consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which Grantor hereby acknowledges, Grantor hereby does give and convey to the Grantee a Façade Easement regarding the Façade of the Buildings.

3. Term of Façade Easement. The term of this Agreement is ten (10) years from the date of execution.

4. Description of Façade Easement. It is agreed by and between Grantor and Grantee, the design drawings of the Façade shown on "Exhibits B-1 and B-2" is the Façade that shall be constructed or installed on the Buildings and owned by Grantor (subject to the terms and restrictions hereof), and is the Façade to which this Façade Easement relates.

5. Consents Required. During the term of this Agreement, the Grantor agrees to do (or refrain from doing, as the case may be) each of the following:

- a. The Grantor shall not demolish, remove or raze the Façade without the express written consent of Grantee.
- b. The Grantor shall not undertake or allow to be undertaken any changes to the Façade including any of the following without the express written consent of the Grantee:
 - i. Any material change in the Façade including the alteration, partial removal, construction, remodeling or physical or structural change or change in color or surfacing with respect to the materials, appearance or construction of the Façade;
 - ii. Add any additional signs, canopies or plaques to the Façade;
 - iii. Any significant reconstruction, repair, repainting or refinishing of the Façade that materially alters its state from its then existing condition.

c. This Section shall not include ordinary or necessary maintenance as covered by Section 7 below or Grantor's repair or reconstruction of the Façade in conformity with Exhibit "B" following a casualty or other event which damages such Façade.

6. Timing of Consent. Within thirty (30) days after Grantor requests in writing permission of Grantee to make a change to the Façade, written consent or refusal to allow the change shall be delivered to the Grantor. In the event Grantee fails to make a decision relative to a request made by Grantor within thirty (30) days of the request, the request will be deemed granted.

7. Maintenance. Grantor agrees that it shall perform ordinary maintenance on the Façade to maintain its appearance and structural soundness and prevent any material deterioration of the Façade. The Grantor shall not have to notify the Grantee maintenance is going to be performed. Grantor shall have no responsibilities relative to any defects in the installation of the Façade, or in the materials which are utilized to construct the Façade, since the Grantee is responsible for the purchase of the materials for and the installation of the Façade and for the correction of such defects.

8. Specification of Work. In the event Grantor is required to seek the consent of the Grantee pursuant to Section 5 of this Agreement, the Grantor shall give the Grantee copies of the plans, designs, elevations, specifications, and documents relating to the change or work, including specification of all materials, colors and construction techniques to be used in any such work and photographs of the subject area as it appears at the time of the request.

9. Insurance. Grantor, at its expense, shall (i) keep each Building including the Façade insured under a standard form of insurance policy against loss or damage resulting from fire and other perils normally insured under a uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State of Indiana and (ii) carry and maintain comprehensive public liability

insurance. The public liability policy shall name the Grantee as an additional insured as to the Façade only and shall provide for not less than thirty (30) days prior written notice to the Grantee by the insurer of any proposed cancellation of any such insurance. The Grantor shall deliver to the Grantee a certificate of insurance prior to the recording of this Façade Easement and, on renewal, a new certificate shall be sent to the Grantee.

10. Casualty Damage. In the event that a Building or any part thereof (including the Façade) shall be damaged by fire or other casualty, then the proceeds of the insurance required to be carried pursuant to Section 8 shall be applied to reconstructing the Façade as constructed under this Agreement if and in the event the Building is reconstructed. If a Building is damaged to such an extent Grantor determines reconstruction is not feasible and provides the Grantee with a statement from an independent engineer to the same effect, then this Façade Easement shall be void and of no further force and effect.

11. Inspection. Grantor covenants representatives of the Grantee shall be permitted to inspect the Façade from the street for the purpose of determining conformance with Façade Easement.

12. Grantee's Remedies. In the event of a violation of any provision of this Agreement, the Grantee may, (i) upon thirty (30) days prior written notice to Grantor and (ii) permitting Grantor an opportunity to take reasonable steps to cure any alleged violation, enforce the Agreement.

13. Runs With the Land. The obligations required by this Agreement shall be deemed to run as a binding servitude with the Property and the Façade. This Agreement shall be binding upon Grantor and the Grantee and all persons hereafter claiming any rights through the Grantor and the Grantee and the word "Grantor" and "Grantee" when used, herein shall include all such

persons. Anything contained herein to the contrary notwithstanding, a person shall have no obligation under this Agreement when the person has ceased to have any interest in a Building or Façade by reasons of a bona fide transfer.

14. Notices. Any notice required under this Agreement shall be in writing and shall be mailed, postage prepaid, by registered or certified mail with return receipt requested, or hand delivered and receipted.

Company:

Great Lakes Capital Development, LLC
112 W. Jefferson Blvd., Ste. 200
South Bend, IN 46601
Attn: Ryan Rans

Commission:

Department of Redevelopment
City of South Bend, Indiana
1400 City-County Building
227 W. Jefferson Boulevard
South Bend, IN 46601-1830
Attn: President

With copy to:

Richard Deahl
Barnes & Thornburg
1st Source Bank Center
100 North Michigan
South Bend, IN 46601

With copy to:

City Attorney's Office
City of South Bend, Indiana
227 W. Jefferson Boulevard, Ste. 1200S
South Bend, IN 46601-1830
Attn: Cristal Brisco

15. Recording. This Agreement shall be recorded in the Office of the St. Joseph County, Indiana Recorder.

16. Condemnation. In the event that any governmental authority institutes a suit by virtue of eminent domain, or other similar proceedings for any public or quasi-public or other use against all or a portion of the Façade, this Agreement shall immediately terminate on that portion of the property only.

17. Taxes. Grantor shall pay when due and owing, all real estate taxes, water charges, sewer charges, and other charges, which may become a lien on the premises, provided, the Grantor may make payment under protest where permitted by law.

18. Indemnify. The Grantor agrees that it shall defend, indemnify and hold the Grantee harmless from and against any liability, claims, suits, demands, judgments (including costs, expenses and attorney's fees), resulting from actions or claims by third parties or defaults under this Agreement by the Grantor arising out of the conveyance of or possession of this Façade Easement.

19. Headings. Section headings used in this Agreement are for convenience or reference only and do not affect the meaning of provisions which they precede.

20. Public Access. The Grantor and Grantee agree the public shall have the regular and substantial opportunity to view the Façade from public rights of way and/or sidewalks in front of the Buildings. The Grantor shall have no obligation to allow the general public to view the interior of the Buildings or any portions of the Buildings or Property other than the Façade.

21. Right to Use of the Premises. The Grantor reserves for itself, its successors, assigns, mortgagees and lessees the right to continue to use and occupy the premises for all lawful purposes not inconsistent with this Façade Easement.

22. Subordination. This Agreement and all rights of Grantee hereunder are subject and subordinate to the lien of any mortgage to any bank, insurance company or other lending institution, now or hereafter in force against the Property.

23. Amendment. For purposes of furthering the preservation of the Façade and of furthering the other purposes of this Façade Easement and to meet the changing conditions, Grantor and the Grantee are free to amend this instrument from time to time by mutual consent in writing and such amendment shall become effective upon its signing.

24. Incorporation by Reference. Grantor agrees the restrictions contained in this Agreement will be inserted by express reference in any subsequent legal instrument affecting the Property.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, on the date first shown above, Grantor and the South Bend Redevelopment Commission have signed this Agreement.

CATALYST ONE, LLC
By: Great Lakes Capital Management, LLC
Its: Manager

By: _____
Ryan C. Rans, Manager

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

Before me, a Notary Public in and for said County and State, personally appeared Ryan C. Rans, as Manager of Great Lakes Capital Management, LLC acting as Manager for and on behalf of Catalyst ONE, LLC and acknowledged the execution of the foregoing on the _____ day of January, 2015.

My Commission Expires:

Printed: _____, Notary Public
Residing in St. Joseph County

EXHIBIT A

LOT NUMBERED SEVEN (7) IN THE REOCRDED PLAT OF IGNITION PARK MAJOR SUBDIVISION, SECTION TWO, RECORDED JULY 1, 2014 AS INSTRUMENT NUMBER 1415380 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA ("RECORDER"), AS CORRECTED AND RE-RECORDED WITH THE RECORDER ON SEPTEMBER 18, 2014 AS INSTRUMENT NO. 1423192.

EXHIBIT B-2

Building Elevations for Building 2

JOSEPH A. DZIBLA & ASSOCIATES, INC.
Architecture & Planning

A2.1

BUILDING ELEVATIONS

IGNITON PARK MULTI-TENANT FACILITY: BUILDING 01 SHELL

3000 SOUTH KODIAK, DENVER, COLORADO

BUILDING ELEVATION
SCALE: 1/8" = 1'-0"

BUILDING ELEVATION
SCALE: 1/8" = 1'-0"

BUILDING ELEVATION
SCALE: 1/8" = 1'-0"

BUILDING ELEVATION
SCALE: 1/8" = 1'-0"

KEYNOTES

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2012 IBC, UNLESS OTHERWISE SPECIFIED.
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2012 IBC, UNLESS OTHERWISE SPECIFIED.
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