



Department of
Community Investment

Memorandum

Tuesday, October 13, 2015

TO: Redevelopment Commissioners
FROM: Chris Fielding
SUBJECT: Advanced Center for Cancer Care

DCI staff is pleased to present the finalization of a development agreement (included in packet) that will result in the attraction of a new high tech business to the downtown. Advanced Center for Cancer Care will provide management and advisory services to other healthcare providers across the United States. The services offered by AC3 will bolster the private practice and mid-cap section of the healthcare industry by assisting them in being in compliance with requirements of the Affordable Care Act. These services will allow many private physicians and small hospitals to remain independent through the streamlining of data analytics and reporting.

The principals of AC3 have committed to leasing space within the One Michiana Square building in downtown for a period of no less than 5 years. The OMS building has been on the radar of community stakeholders for some time due to the declining tenancy and failure to address issues of deferred maintenance. The attraction of a credit tenant lease will serve as a catalyst for private developers to address these issues.

AC3 has committed to the relocation of 20 employees to the downtown and will create 110 new jobs with average wages of \$25.00 per hour. AC3 intends to invest approximately \$7 million to equip and improve their space with a request of \$900,000 in TIF to assist in the acquisition of technology that will be leased back to the company to support their growth.

We are pleased to present a finalized and executed Development Agreement in your packet today outlining the commitment of \$900,000 in TIF funding to support the attraction of the new facility. Staff requests approval of the terms of the Development Agreement.



DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement"), is effective as of _____, 2015 (the "Effective Date"), by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the "Commission"), and Advacned Centers of Cancer Care, LLC d/b/a Advanced Centers for Cancer Care Delaware, LLC, a Delaware limited liability company, with offices at 3975 William Richardson Drive, South Bend, Indiana 46628 (the "Developer") (each, a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the "Act"); and

WHEREAS, the Commission desires to foster redevelopment and economic development within the City of South Bend (the "City"); and

WHEREAS, the Developer provides management and advisory services to medical practices and other health care providers across the United States; and

WHEREAS, the Developer desires to relocate its operations to the City and to expand its workforce (the "Project") in order to develop and cultivate new services to meet its customers' emerging needs under the federal Affordable Care Act and associated guidelines of the Centers for Medicare & Medicaid Services; and

WHEREAS, in furtherance of the Project, the Developer has selected and intends to lease approximately 13,525 square feet of commercial space in the real property described in **Exhibit A** (the "Leased Premises") located within the corporate boundaries of the City and within the River West Development Area (the "Area"); and

WHEREAS, the Commission desires to facilitate and assist the Developer's Project by acquiring, through the expenditure of tax increment financing revenues, and leasing to the Developer the information technology equipment described in **Exhibit B** (the "Equipment"), which Equipment is necessary to carry out the Developer's desired expansion of services to the medical industry, subject to the terms and conditions of this Agreement and in accordance with the Act; and

WHEREAS, the Commission believes that assisting the Developer to consummate its relocation to the Area is in the best interests of the health, safety, and welfare of the City and its residents.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated in this Agreement, the adequacy of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS.

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Board of Works. “Board of Works” means the Board of Public Works of the City.

1.2 Equipment Funding Amount. “Equipment Funding Amount” means an amount not to exceed Nine Hundred Thousand Dollars (\$900,000.00) of tax increment finance revenues to be used for paying the costs associated with the acquisition of the Equipment.

1.3 Private Investment. “Private Investment” means an amount not less than Seven Million Dollars (\$7,000,000.00) to be expended by the Developer for the costs associated with relocating its operations to and expanding its workforce in the Area, including its lease of the Leased Premises and the costs of meeting the Job Transfer Requirement and the Job Creation Requirement, as such terms are defined below.

SECTION 2. INTERPRETATION, TERMS, AND RECITALS.

2.1 Interpretation.

(a) The terms “herein,” “hereto,” “hereunder,” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section” or “Article” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit” shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

SECTION 3. RESERVED.

SECTION 4. DEVELOPER’S OBLIGATIONS.

4.1 Generally. The Parties acknowledge and agree that the Commission’s agreements to perform and abide by the covenants and obligations set forth in this Agreement are material

consideration for the Developer's commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

4.2 The Project.

(a) The Developer will Lease the Leased Premises on terms agreeable to the Developer and the owner of the Leased Premises. The Developer's leasing of the Leased Premises for a term of at least five (5) years and providing evidence of the same to the Commission is a condition precedent to all of the Parties' respective obligations under this Agreement. The Developer expects to expand the Leased Premises to include 50,000 square feet within five (5) years of the commencement of the Developer's lease of the Leased Premises.

(b) The Developer will expend the full amount of the Private Investment within five (5) years of the Effective Date of this Agreement.

4.3 Developer's Employment Obligations.

(a) Transfer of Jobs to Area. On or before April 1, 2016, the Developer will relocate at least twenty (20) full-time employees' jobs to the Leased Premises (the "Job Transfer Requirement"). Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to satisfy the Job Transfer Requirement within the stated time period will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

(b) New Jobs. The Developer shall create one hundred ten (110) new, full-time, permanent jobs located at the Leased Premises, with average hourly wages of no less than Twenty-Two Dollars (\$22.00) per hour for each employee (the "Job Creation Requirement") by the date that is one hundred twenty (120) months after the Effective Date of this Agreement (the "Job Creation Deadline") and maintain said jobs for at least the period of time described in Section 4.4 below. Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to satisfy the Job Creation Requirement by the Job Creation Deadline will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.4 Reporting Obligations. On or before December 31 of each year until and including calendar year 2025, the Developer shall submit to the Commission a report demonstrating the Developer's good-faith compliance with the terms of this Agreement. The report shall include the following information and documents: (i) an itemized accounting of the Private Investment to date, (ii) the number of jobs created by the Developer as a result of the Project, and (iii) a detailed description of the of the job and wage details for the jobs created by the Developer as a result of the Project.

4.5 Non-Interference. Developer hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Leased Premises during the Developer's relocation to the Leased Premises and carrying out of the Project.

4.6 Equipment Procurement and Equipment Lease. The Developer will cooperate in good faith with the Commission's procurement of the Equipment for the Developer's use in connection with the Project and its business operations in the Area. The Commission, through the Board of Works, will conduct such procurement in accordance with the Act and all applicable public purchasing and procurement laws. The Developer will enter into the equipment lease attached hereto as Exhibit C (the "Equipment Lease"), under which the Developer will lease the Equipment from the Commission on the terms stated therein. The Developer will use the Equipment in accordance with the Equipment Lease, and at all times each piece of Equipment will remain in a permanently fixed location within the geographical boundary of the Area, which location(s) may include, without limitation, the Leased Premises. Any default by the Developer under the Equipment Lease will constitute a default under this Agreement.

4.7 Prohibition on Tax Abatement. The Developer agrees that it will not at any time request, demand, or apply for any abatement of personal property taxes or any other taxes or assessments assessed against the Equipment following the Commission's procurement of the Equipment under the terms of this Agreement. The foregoing prohibition will survive any expiration or termination of this Agreement and any expiration or termination of the Equipment Lease.

4.8 Information. The Developer agrees to provide any and all due diligence items with respect to the Project reasonably requested by the Commission.

4.9 Cooperation. The Developer agrees to endorse and support the Commission's acquisition of the Equipment through any required planning, design, public bidding, construction, permitting, waiver, and related regulatory processes.

SECTION 5. COMMISSION'S OBLIGATIONS.

5.1 Generally. The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission's commitment to perform and abide by the covenants and obligations of the Commission contained in the Agreement.

5.2 Equipment Procurement and Equipment Lease.

(a) The Commission will make commercially reasonable efforts to procure the Equipment for the Developer's use in connection with the Project and its business operations in the Area. The Commission will conduct such procurement in accordance with the Act and all applicable public purchasing and procurement laws.

(b) The Commission will enter into the Equipment Lease, under which the Commission will lease the Equipment to the Developer on the terms stated therein. The Commission will be entitled to oversee the installation of the Equipment in its permanent location(s) within the geographical boundary of the Area and to inspect the Equipment at such location(s) at any reasonable time during the term of the Equipment Lease without prior notice to or consent of the Developer.

(c) Notwithstanding anything contained herein to the contrary, in the event the costs associated with the acquisition of the Equipment exceed the Equipment Funding Amount, Developer, at its sole option, may determine to pay to the Commission the amount of the excess costs to permit timely acquisition of the Equipment. If Developer chooses not to pay any such excess costs of the Equipment (above the Equipment Funding Amount), the Commission may reduce the scope of its acquisition such that the Equipment Funding Amount will be sufficient. In no event will the Commission be required to spend more than the Equipment Funding Amount in connection with its acquisition of the Equipment.

5.3 Public Announcements, Press Releases, and Marketing Materials. The Commission hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

SECTION 6. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

6.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the Commission be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the Commission's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 6.1, which shall survive such invalidation, nullification, or setting aside.

SECTION 7. DEFAULT.

7.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 7.1, then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligations. The reimbursement obligations stated in this Section will be cumulative with all rights and remedies stated in the Equipment Lease and those otherwise available at law or in equity. In the event that the Developer fails (a) to satisfy the Job Transfer Requirement or (b) to expend the full amount of the Private Investment within five (5) years of the Effective Date of this Agreement, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Fifty Percent (150%) of the portion of the Equipment Funding Amount expended by the Commission in furtherance of procuring the Equipment as of the date of the Commission's demand. In the event that the Developer fails to satisfy the Job

Creation Requirement by the Job Creation Deadline, then upon the written demand of the Commission, the Developer will repay the Commission an amount equal to Seven Thousand Nine Hundred Forty-One Dollars (\$7,941.00) multiplied by the number of jobs by which the Developer fell short of the Job Creation Requirement as of the date of the Commission's demand.

7.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of "Force Majeure"). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

SECTION 8. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST, INDEMNITY.

8.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

(a) The Project is a private undertaking; and

(b) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission, the City, and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission, the City, and the Developer.

8.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City 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, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Developer or successors of them shall be personally liable to the Commission under this Agreement.

8.3 Indemnity. The Developer agrees to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Equipment or the Project.

SECTION 9. MISCELLANEOUS.

9.1 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.

9.2 Other Necessary Acts. Each Party will undertake in good faith, as permitted by law, any action and execute and deliver to the other Party all such further instruments and documents as may be reasonably necessary to accomplish the intentions of this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

9.3 Waiver of Jury Trial. The Parties acknowledge that disputes arising under this Agreement are likely to be 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.

9.4 Attorneys' Fees. In the event of any litigation, mediation, or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

9.5 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the Developer's relocation to the Leased Premises and carrying out of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

9.6 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

9.7 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer: Advacned Centers of Cancer Care, LLC d/b/a
Advanced Centers for Cancer Care Delaware, LLC
3975 William Richardson Drive
South Bend, Indiana 46628
Attn: _____

With a copy to: _____

Attn: _____

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Chris Fielding

With a copy to: South Bend Legal Department
1200 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Corporation Counsel

9.8 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

9.9 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

9.10 No Third-Party Beneficiaries. 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.

9.11 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. The Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which the Commission may give or withhold in its sole discretion. In the event the Developer seeks the Commission's consent to any such assignment, the Developer shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

9.12 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

9.13 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

9.14 Time. Time is of the essence of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date.

COMMISSION:

**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

Signature

Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

Signature

Printed Name and Title

South Bend Redevelopment Commission

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

Before me, the undersigned, a Notary Public for and in said County and State, this ____ day of _____, 2015, personally appeared _____ and _____, the _____ and _____ of the South Bend Redevelopment Commission, and acknowledged execution of the foregoing Development Agreement for and on behalf of South Bend Redevelopment Commission for the use and purposes contained therein.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

(SEAL)

Commission expires: _____, Notary Public
Resident of _____ County, _____

DEVELOPER:

**ADVACNED CENTERS OF CANCER CARE,
LLC D/B/A ADVANCED CENTERS FOR
CANCER CARE DELAWARE, LLC**

By: R. Ansari
Name: Rafat Ansari M.D.
Title: CEO

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

Before me, the undersigned, a Notary Public in and for said County and State, this ____ day of 28th, 2015, personally appeared Rafat Ansari, MD, the CEO of Advacned Centers of Cancer Care, LLC d/b/a Advanced Centers for Cancer Care Delaware, LLC, and acknowledged execution of the foregoing Development Agreement for and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

(SEAL)

Virginia E. Berger

Commission expires: 11/19/2015 VIRGINIA E. BERGER Notary Public
Resident of ST. JOSEPH County, INDIANA



Virginia E. Berger, Notary Public
Comm. Expires Nov. 19, 2015
Resides in St. Joseph Co., IN
Comm. Number 575472

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

EXHIBIT A

Description of Leased Premises

Approximately 13,525 square feet of the commercial building commonly known as One Michiana Square, located at 100 E. Wayne Street, South Bend, Indiana 46601.

EXHIBIT B

Description of Equipment

The Commission will acquire the following equipment in accordance with the terms and conditions of the Agreement and in compliance with all applicable laws and regulations:

A. _____

B. _____

C. _____

EXHIBIT C

Equipment Lease

[See attached.]