



Department of  
**Community Investment**

## Memorandum

Thursday March 24, 2016

TO: South Bend Redevelopment Commission  
FROM: Brian Pawlowski, Business Development  
SUBJECT: Agreement To Buy and Sell Real Estate (former Schilling's)

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Jones Petrie Rafinski (JPR) is a downtown business specializing in land surveying, architectural design and engineering. In 2007 JPR purchased their current location from the Redevelopment Commission to expand their downtown presence. In the last 9 years they have continued to grow and their current building is no longer sufficient to accommodate their existing staff or to allow future growth. They are expanding their operations and would like to acquire the former Schilling's building from the Commission.

JPR will consolidate a majority of their operations in other cities to South Bend as a result of this purchase, and by the end of this year add an additional 19 to 20 professionals to the downtown, with wages ranging from \$20.15 to \$36.07 an hour. They plan to add approximately 16 more employees in the ensuing next three years. New taxes from building improvements will generate approximately \$173,000 and new LOIT taxes from the net new jobs will be approximately \$80,000.

As part of the purchase agreement, JPR commits to investing over \$650,000 within the next 18 months, completing interior renovations, new roofing improvements, a complete façade renovation, and landscaping that will complement the redevelopment efforts already underway at the intersection of Lafayette and Western like Xanatek and the area around Four Winds Field. The purchase price will be \$1.

Staff asks the Commission for approval of the Agreement To Buy and Sell Real Estate with JPR, to allow the sale of this property, owned by the Commission since 2009.



## AGREEMENT TO BUY AND SELL REAL ESTATE

This Agreement To Buy And Sell Real Estate (this "Agreement") is made on March 24, 2016 (the "Contract Date"), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission ("Seller"), and Jones Petrie Rafinski Corp., an Indiana corporation with its registered office at 4703 Chester Dr., Elkhart, Indiana 46516 ("Buyer") (each a "Party" and together the "Parties").

### 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 certain real property located in South Bend, Indiana (the "City"), and more particularly described in attached Exhibit A (the "Property").

C. Pursuant to the Act, Seller adopted its Resolution No. 3103 on November 8, 2012, whereby Seller established an offering price of Two Hundred Seventy-Seven Thousand Five Hundred Dollars (\$277,500.00) for the Property.

D. Pursuant to the Act, on November 8, 2012, Seller authorized the publication, on November 16, 2012, and November 23, 2012, respectively, of a notice of its intent to sell the Property and its desire to receive bids for said Property on or before December 13, 2012.

E. As of December 13, 2012, Seller received no bids for the Property, and, therefore, having satisfied the conditions stated in Section 22 of the Act, Seller now desires to sell the Property to Buyer on the terms stated in this Agreement.

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

#### 1. OFFER AND ACCEPTANCE

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

Brian Pawlowski  
City of South Bend  
1400 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, Indiana 46601

anticipated use of the Property. If Seller's written consent to or signature upon any such application is required by any such agency for consideration or acceptance of any such application, Buyer may request from Seller such consent or signature, which Seller shall not unreasonably withhold. Notwithstanding the foregoing, any zoning commitments or other commitments that would further restrict the future use or development of the Property, beyond the restrictions in place as a result of the current zoning of the Property, shall be subject to Seller's prior review and written approval.

D. Termination of Agreement. If at any time within the Due Diligence Period, Buyer determines, in its sole discretion, not to proceed with the purchase of the Property, Buyer may terminate this Agreement by written notice to Seller's Representative.

#### **4. SELLER'S DOCUMENTS/SURVEY AND ENVIRONMENTAL REPORT**

Upon Buyer's request, Seller will provide Buyer a copy of all environmental inspection, engineering, title, and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller's Representative with or without a written request by Seller. In addition to reviewing any environmental reports provided by Seller, Buyer may, at Buyer's sole expense, obtain a Phase I environmental site assessment of the Property pursuant to and limited by the authorizations stated in Section 3 above.

#### **5. PRESERVATION OF TITLE**

After the Contract Date, Seller shall not take any action or allow any action to be taken by others to cause the Property to become subject to any interests, liens, restrictions, easements, covenants, reservations, or other matters affecting Seller's title (such matters are referred to as "Encumbrances"). Seller acknowledges that Buyer intends to obtain, at Buyer's sole expense, and to rely upon a commitment for title insurance on the Property (the "Title Commitment") and a survey of the Property (the "Survey") identifying all Encumbrances as of the Contract Date. The Property shall be conveyed to Buyer free of any Encumbrances other than Permitted Encumbrances (as defined in Section 7 below).

#### **6. TITLE COMMITMENT AND POLICY REQUIREMENTS**

Buyer, at Buyer's sole expense, shall obtain the Title Commitment for an owner's policy of title insurance issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company") within twenty (20) days of the Contract Date. The Title Commitment shall (i) agree to insure good, marketable, and indefeasible fee simple title to the Property (including public road access) in the name of the Buyer for an amount established by Buyer upon delivery and recordation of a special warranty deed from the Seller to the Buyer, and (ii) provide for issuance of a final ALTA owner's title insurance policy, with any endorsements requested by Buyer, subject to the Permitted Encumbrances. Regardless of whether this transaction closes, Buyer shall be responsible for all of the Title Company's title search charges and all costs of the Title Commitment and owner's policy.

C. RESERVED.

D. Closing Costs. Buyer shall pay all of the Title Company's closing and/or document preparation fees and all recordation costs associated with the transaction contemplated in this Agreement.

## 11. BUYER'S POST-CLOSING DEVELOPMENT OBLIGATIONS

A. Lot Improvements and Building Improvements. Within eighteen (18) months after the Closing Date, Buyer agrees to expend at least Six Hundred Fifty Thousand Dollars (\$650,000.00) to complete Buyer's improvements on the Property, including improvements to the interior and exterior of the existing building on the Property (collectively, the "Development Obligations"). Before commencing construction, Buyer agrees to present to the Planning Division of the City's Department of Community Investment ("Planning") plans and specifications showing the nature and placement of the Buyer's anticipated improvements on the Property and will work cooperatively with Planning to address any of Planning's feedback on such plans and specifications. Promptly upon completing its Development Obligations, Buyer will submit to Seller satisfactory records, as determined in Seller's sole discretion, proving the above required expenditures and will permit Seller (or its designee) to inspect the Property to ensure satisfactory completion of Buyer's Development Obligations.

B. Certificate of Completion. Promptly after Buyer completes its Development Obligations and satisfactorily proves the same in accordance with the terms of Section 11.A. above, Buyer may request that Seller issue to Buyer a certificate acknowledging such completion and releasing Seller's reversionary interest in the Property (the "Certificate of Completion"), which Seller will not unreasonably withhold. The Parties agree to record the Certificate of Completion immediately upon issuance, and Buyer will pay the costs of recordation.

C. Reversion upon Default. In the event Buyer fails to perform any of its Development Obligations, or satisfactorily prove such performance, in accordance with Section 11.A above, then Seller shall have the right to re-enter and take possession of the Property and to terminate and revert in Seller the estate conveyed to Buyer at Closing and all of Buyer's rights and interests in the Property without offset or compensation for the value of any improvements made by Buyer. The Parties agree that Seller's conveyance of the Property to Buyer at Closing will be made on the condition subsequent that is set forth in the foregoing sentence.

## 12. ACCEPTANCE OF PROPERTY "AS-IS"

Buyer agrees to purchase the Property "as-is, where-is" and without any representations or warranties by Seller as to the condition of the property or its fitness for any particular use or purpose. Seller offers no such representation or warranty as to condition or fitness, and nothing in this Agreement shall be construed to constitute such a representation or warranty as to condition or fitness.

## 13. TAXES

of Completion in accordance with Section 11 above, then Seller shall have the right to re-enter and take possession of the Property and to terminate and revest in Seller the estate conveyed to Buyer at Closing and all of Buyer's rights and interests in the Property without offset or compensation for the value of any improvements made by Buyer. The Parties agree that Seller's conveyance of the Property to Buyer will be made on the condition subsequent that is set forth in the foregoing sentence.

**19. BINDING EFFECT; COUNTERPARTS; SIGNATURES**

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

**20. AUTHORITY TO EXECUTE; EXISTENCE**

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

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

BUYER:

SELLER:

Jones Petrie Rafinski Corp., an Indiana corporation

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

By:

By:

\_\_\_\_\_  
Printed:

\_\_\_\_\_  
Marcia I. Jones, President

Its:

Dated:

ATTEST:

By:

\_\_\_\_\_  
Donald E. Inks, Secretary

**EXHIBIT B**

**Form of Special Warranty Deed**

Commonly known as 325 and 333 S. Lafayette Blvd., South Bend, Indiana  
[Parcel Key Numbers 018-3009-0308 and 018-3009-0311]

The Grantor warrants title to the Property only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.

The Grantor hereby conveys the Property to the Grantee free and clear of all leases or licenses; subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in the Grantor's development area plan dated May 10, 1985, and recorded as Document No. 8509691 in the Office of the Recorder of St. Joseph County, Indiana, as thereafter amended from time to time, and any design review guidelines associated therewith.

The Grantor conveys the Property to the Grantee pursuant to the terms of that certain Agreement To Buy And Sell Real Estate dated March 24, 2016, by and between the Grantor and the Grantee (the "Agreement"). Capitalized terms not otherwise defined in this deed will have the meanings stated in the Agreement. Pursuant to Sections 11 and 18 of the Agreement, the Grantor conveys the Property to the Grantee by this deed subject to certain conditions subsequent. In the event the Grantee fails to perform any of its Development Obligations, or satisfactorily prove such performance, in accordance with Section 11 of the Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revest in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee's rights and interests in the Property without offset or compensation for the value of any improvements made by the Grantee. The recordation of a Certificate of Completion in accordance with Section 11 of the Agreement will forever release and discharge the Grantor's reversionary interest stated in the foregoing sentence. In addition, in the event the Grantee assigns or attempts to assign any of its rights in the Property before the Grantor's issuance of a Certificate of Completion under Section 11 of the Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revest in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee's rights and interests in the Property without offset or compensation for the value of any improvements made by the Grantee.

The Grantor conveys the Property to the Grantee subject to the limitation that the Grantee, and its successors and assigns, shall not discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

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

GRANTOR:

CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, 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 Donald E. Inks, 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 \_\_\_\_\_, 2016.

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. Benjamin J. Dougherty.

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.