



Department of
Community Investment

Memorandum

Friday, July 24, 2015

TO: Redevelopment Commission

FROM: Chris Fielding

SUBJECT: Blackthorn Lot 4P - Unifirst

Included in the Commission packet is an executed purchase agreement between Cohn & Cohn Investments, LLC and the RDC. This Purchase Agreement outlines the negotiated terms for the sale of Lot 4P in Blackthorn Corporate Park.

Cohn & Cohn will be the developer of a 20,000 square foot distribution Center that will be leased and operated by Unifirst. Unifirst is a publically traded company with approximately \$1.5 billion in annual revenue generated largely by their Garment and uniform rental division.

From Petition for Incentives:

“UniFirst is one of North America's largest workwear and textile service companies, providing managed uniform, protective clothing, and custom corporate image apparel programs to businesses in diverse industries. In addition to outfitting more than 1.5 million workers in clean uniforms each workday, we also have a hand in keeping their businesses clean, safe, and healthy through our Facility Service Programs... allowing us to be a single-source solution for a variety of needs. The project is to move from a leased operation to a lease to own operation. Our long term plan is to be in South Bend for the next several decades, if not longer. Our current lease is expiring in October of 2016. Our annual South Bend revenues are \$4.2 million. With our current growth objectives for the South Bend market, our long term objective is build a processing facility. Once our annual revenues surpass \$10 million, we will have the ability to expand the operation, adding numerous jobs to the local economy. This current property will allow UniFirst to continue to expand our operation, benefiting the South Bend economy.”

The Petition for Incentives calls for a private investment of approximately \$3.4 million over 5 years and the retention of 23 jobs at an average wage of \$19.50 per hour.

Staff is requesting the approval and execution of the enclosed Purchase Agreement. It is anticipated that additional closing documents will be required and may require execution by Marcia prior to closing at a later date.



AGREEMENT TO BUY AND SELL REAL ESTATE

This Agreement To Buy And Sell Real Estate ("Agreement") is made on July 30, 2015 (the "Contract Date"), by and between the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission ("Seller") and Cohn & Cohn Investments, LLC, a South Carolina limited liability company, with its principal office at 912 Lady Street, Second Floor, Columbia SC 29201 ("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 I.C. 36-7-14 (the "Act").

B. In furtherance of its purposes under the Act, Seller owns certain real property located in South Bend, Indiana, and more particularly described in attached Exhibit A (the "Property").

C. Pursuant to the Act, Seller adopted its Resolution No. 1148 on March 19, 1993, whereby Seller established per-acre disposition values for certain real property owned by Seller (the "Tract"), the boundary of which Tract wholly encompasses the Property.

D. Pursuant to the Act, on March 19, 1993, Seller authorized the publication, on March 26, 1993, and April 2, 1993, respectively, of a notice of its intent to sell the Tract, of which the Property is a part, and its desire to receive bids for said Tract on or before April 16, 1993.

E. As of April 16, 1993, Seller received no bids for the Tract, and, therefore, Seller now, having satisfied the conditions stated in Section 22 of the Act, 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/PURCHASE AND SALE OBLIGATION

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

Chris Fielding
Department of Redevelopment
City of South Bend
1400 S. County-City Building

227 W. Jefferson Blvd.
South Bend, IN 46601

This offer shall expire thirty (30) days after delivery unless accepted by Seller. To accept Buyer's offer, Seller shall return a copy of this Agreement, counter-signed by Seller in accordance with applicable laws, to Buyer's agent, Nick Stomski of NAI Avant, 807 Gervais Street, Suite 301, Columbia, South Carolina 29201 ("Buyer's Agent").

By delivering a counter-signed copy of this Agreement to Buyer's Agent, Seller agrees to sell the Property to the Buyer upon the terms and conditions set forth herein.

2. PURCHASE PRICE AND EARNEST MONEY DEPOSIT

A. Purchase Price. The purchase price for the Property shall be Fifty-Eight Thousand Dollars (\$58,000.00) (the "Purchase Price"), payable by Buyer to Seller in cash at the closing described in Section 10 (the "Closing," the date of which is the "Closing Date").

B. Earnest Money Deposit. Within five (5) business days after the Contract Date, Buyer will deliver to Buyer's Agent the sum of Five Thousand Dollars (\$5,000.00), which Buyer's Agent will deposit into a non-interest-bearing account and hold as an earnest money deposit (the "Earnest Money Deposit"). Buyer's Agent will serve as an escrow agent responsible to both Parties for disposing of the Earnest Money Deposit in accordance with the terms of this Agreement. The Earnest Money Deposit shall be credited against the Purchase Price at the Closing or, if no Closing occurs, refunded or forfeited as provided below.

C. Termination During Due Diligence Period. If Buyer exercises its right to terminate this Agreement by written notice to Seller in accordance with Section 3 below, the Earnest Money Deposit shall be refunded to Buyer. If Buyer fails to exercise its right to terminate this Agreement by written notice to Seller within the Due Diligence Period, then Earnest Money Deposit shall become non-refundable.

3. BUYER'S DUE DILIGENCE

A. Investigation. Buyer and Seller have made and entered into this Agreement based on their mutual understanding that the Buyer intends to use the Property for OFFICE WAREHOUSE DISTRIBUTION in accordance with all applicable laws (the "Buyer's Use"). Seller acknowledges that Buyer's determination whether Buyer's Use is feasible requires a process of investigation (Buyer's "Due Diligence") into various matters. Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

B. Authorizations During Due Diligence Period. Seller authorizes Buyer, as of the Due Diligence Commencement Date (as defined below) and continuing until the end of the Due Diligence Period (as defined below), upon Buyer providing Seller with evidence that Buyer has general liability insurance reasonably acceptable to Seller, in the amount of at least One Million Dollars (\$1,000,000), naming Seller as an additional insured and covering the activities, acts, and omissions of Buyer and its representatives at the Property, to

(i) enter upon the Property or to cause agents to enter upon the Property for purposes of examination; provided, that Buyer may not take any action upon the Property which reduces the value thereof and Buyer may not conduct any invasive testing at the Property without Seller's express prior written consent; further provided, that if the transaction contemplated herein is not consummated, Buyer shall promptly restore the Property to its condition prior to entry, and agrees to defend, indemnify and hold Seller harmless, before and after the Closing Date whether or not a closing occurs and regardless of any cancellations or termination of this Agreement, from any liability to any third party, loss or expense incurred by Seller, including without limitation, reasonable attorney fees and costs arising from acts or omissions of Buyer or Buyer's agents or representatives; and

(ii) file any application with any federal, state, county, municipal or regional agency relating to the Property for the purpose of obtaining any approval necessary for Buyer's Use. 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.

For purposes of this Section 3, the "Due Diligence Commencement Date" will be the later of the following: (a) the Contract Date, or (b) the date upon which Seller obtains title to the Property satisfactory to Seller, as determined in Seller's sole discretion.

C. Due Diligence Period. Buyer shall have a period of ninety (90) days following the Due Diligence Commencement Date to complete its examination of the Property in accordance with this Section 3 (the "Due Diligence Period").

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

Seller will provide Buyer, within seven (7) business days after the Contract Date, with 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.

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 (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).

6. TITLE COMMITMENT AND POLICY REQUIREMENTS

Buyer, at Buyer's sole expense, shall obtain a commitment (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 sixty (60) days of the Contract Date. The Title Commitment shall:

(1) Agree to insure good, marketable and indefeasible fee simple title to the Property (including public road access) in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed from the Seller to the Buyer.

(2) 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 the cost of the Title Commitment and owner's policy.

7. REVIEW OF TITLE COMMITMENT AND SURVEY

Buyer shall give Seller written notice, within sixty (60) days after the Contract Date, of any objections to the Survey or Title Commitment. Any exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a Permitted Encumbrance. If the Seller is unable or unwilling to correct the Buyer's title and survey objections within thirty (30) days after receipt of a written notice of Buyer's objection to a matter revealed by review of the Survey and/or Title Commitment, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Due Diligence Period, in which case the Earnest Money shall be refunded to Buyer. If Buyer fails to so terminate this Agreement, then such objections shall constitute Permitted Encumbrances as of expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to Buyer's title and survey objections.

8. DISPUTE RESOLUTION

A. Forum. 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.

B. Waiver of Jury Trial. Both Parties hereby waive any right to trial by jury with respect to any action or proceeding relating to this Agreement.

9. NOTICES

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller in care of Seller's Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn: Corporation Counsel), or to Buyer in care of Buyer's Agent at the respective addresses stated in Section 1 above. Either Party may, by written notice, modify the address for future notices to such Party.

10. CLOSING

A. Timing of Closing. If the Buyer does not terminate this Agreement due to a breach of this Agreement by Seller, or without cause during the Due Diligence Period, the transfer of title contemplated by this Agreement (the "Closing") shall be held at the office of the Title Company on a mutually agreeable date not later than within forty-five (45) days after the end of the Due Diligence Period.

B. Closing Procedure.

(1) At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller's delivery of a special warranty deed, in the form attached hereto as Exhibit B, conveying the Property to the Buyer, free and clear of all liens, encumbrances, title defects and exceptions other than Permitted Encumbrances, and the Title Company's delivery of the marked-up copy of the Title Commitment to Buyer in accordance with Section 6 above.

(2) The possession of the Property shall be delivered to the Buyer at Closing, in the same condition as it exists on the Contract Date, ordinary wear and tear and casualty excepted.

C. Conditions Precedent to Closing. Unless waived by the Parties before or at Closing, the following shall be conditions precedent to Closing:

(1) Seller shall have no obligation to complete the transaction contemplated in this Agreement unless it first obtains title to the Property in a state satisfactory to Seller, as determined in Seller's sole discretion, including without

limitation the release of any and all options or rights held by third parties to purchase the Property.

(2) Seller shall have no obligation to complete the transaction contemplated in this Agreement unless Buyer delivers to Seller before the Closing Date specifications for the design and expected operations of any structure Buyer intends to construct on the Property for Buyer's Use (as defined above), which shall comply with all applicable laws and restrictions, including, without limitation, the Declaration of Protective Covenants and Restrictions of the Blackthorn Corporate Park and any amendments thereto.

(3) Buyer shall have no obligation to complete the transaction contemplated in this Agreement unless the South Bend Common Council first grants Buyer a three-year real property tax abatement for the Property (by which 100% of real property taxes will be abated in the first year of the abatement, 80% of real property taxes will be abated in the second year of the abatement, and 60% of real property taxes will be abated in the third year of the abatement). Seller hereby agrees to recommend approval of an application for such tax abatement submitted by Buyer to the South Bend Common Council.

Notwithstanding any provision of this Agreement to the contrary, in the event this transaction is not completed due to the failure of one or more of the foregoing conditions, Seller shall have no liability for any of Buyer's losses, damages, costs or expenses of any kind, including attorney fees, incurred in connection with its proposed acquisition of the Property under this Agreement, except for the return of the Earnest Money Deposit as provided for above.

D. Closing Costs. Buyer and Seller shall pay equal shares of the Title Company's closing fee and all recordation costs associated with the transaction contemplated in this Agreement.

11. 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 Buyer's Use or 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.

12. TAXES

Buyer, and Buyer's successors and assigns, shall be liable for any and all real property taxes 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 associated with the Property, and nothing in this Agreement shall be construed to require the proration or other apportionment of real property taxes resulting in Seller's liability therefor.

13. COMMISSIONS

The Parties acknowledge that Seller is not represented by any broker in connection with the transaction contemplated in this Agreement and that Buyer is represented by Buyer's Agent alone, which Buyer will compensate by a separate agreement, and no other broker. Buyer and Seller agree to indemnify and hold one another harmless from any claim for commissions in connection with the transaction contemplated in this Agreement.

14. INTERPRETATION; APPLICABLE LAW

Both Parties having participated fully and equally in the negotiation and preparation of this Agreement, this Agreement shall not be more strictly construed, nor shall any ambiguities in this Agreement be presumptively resolved, against either Party. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

15. ENTIRE AGREEMENT

This Agreement embodies the entire agreement between Seller and Buyer and supersedes all prior discussions, understandings, or agreements between Seller and Buyer concerning the transaction contemplated in this Agreement, whether written or oral.

16. ASSIGNMENT

Buyer and Seller agree that this Agreement or any of its rights hereunder may not be assigned by Buyer, in whole or in part, without the prior written consent of Seller. 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.

17. 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 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. Facsimile signatures will be regarded as original signatures.

18. AUTHORITY TO EXECUTE; EXISTENCE

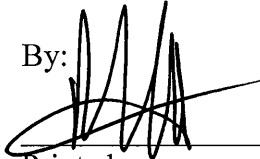
The undersigned persons executing and delivering this Agreement on behalf of the respective Parties represent and certify that they are the duly authorized representatives of each and have been fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done. Further, Buyer represents and

warrants that Buyer is duly organized, validly existing, and in good standing under the laws of the State of South Carolina.

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

BUYER:

Cohn & Cohn Investments, LLC, a South Carolina limited liability company

By:  _____

Printed:
Its: **MANAGING MEMBER**

SELLER:

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

By: _____
Marcia I. Jones, President

ATTEST:

By: _____
Donald E. Inks, Secretary

EXHIBIT A

Description of Property

Lot Numbered Six (6) as shown on the recorded plat of Blackthorn Corporate Office Park Minor Subdivision #7, recorded July 13, 1998, as Document No. 9836274 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062208]

EXHIBIT B

Form of Special Warranty Deed

AUDITOR'S RECORD

TRANSFER NO. _____

TAXING UNIT _____

DATE _____

KEY NO. _____

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 Cohn & Cohn Investments, LLC, a South Carolina limited liability company, with its principal office at 912 Lady Street (the "Grantee"),
Second Floor
Columbia, SC 29201

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 in St. Joseph County, Indiana (the "Property"):

Lot Numbered Six (6) as shown on the recorded plat of Blackthorn Corporate Office Park Minor Subdivision #7, recorded July 13, 1998, as Document No. 9836274 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key No. 025-1018-062208]

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 Commission's development area plan applicable to the Property, as amended, recorded on July 9, 2008, as Document No. 0822743 in the Office of the Recorder of St. Joseph County, Indiana, and any design review guidelines associated therewith.

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.

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.

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 _____, 201__.

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.