



Department of
Community Investment

Memorandum

Feb 16, 2016

TO: Redevelopment Commission
FROM: Brian Pawlowski, Community Investment
SUBJECT: Xanatek Purchase Agreement

After going through the disposition process in September of 2013 with an average appraised value of \$82,500 no bids were received for the property at 402 S. Lafayette Blvd. Since that time there have been various discussions about potential uses for the lot but none have come to fruition.

Xanatek is a small business that has called South Bend home for ten years. They currently employ 24 people with an average salary of \$53,000 and are looking to hire 15-25 more in the next 5 years. Last year they experienced a growth in revenue of 32.5% and need to expand their footprint. Xanatek is planning to purchase the current JPR building adjacent to the lot specified above. They plan to invest significant dollars into the improvement of both the lot and the building itself to create one seamless campus. Total investment for purchase and upgrades will be approximately \$750,000.

In purchasing this property Xanatek agrees to:

- Within 18 months invest up to \$225,000 into the JPR building
- Purchase the lot for \$20,000
- Within 18 months invest up to \$120,000 into lot improvements
- Obtain City approval of lot improvement design
- Give the City a first right of refusal should the property be on the market in the future

Staff requests approval of this Purchase Agreement.





William St

Western Ave

Main St

Lafayette Blvd

Main St

Monroe

AGREEMENT TO BUY AND SELL REAL ESTATE

This Agreement To Buy And Sell Real Estate (“Agreement”) is made on _____, 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 412 SB LLC, an Indiana limited liability company with its registered office at 412 S. Lafayette Blvd., South Bend, Indiana 46601 (“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. 3059 on August 16, 2012, whereby Seller established an offering price of Eighty-Two Thousand Five Hundred Dollars (\$82,500.00) for the Property.

D. Pursuant to the Act, on August 16, 2012, Seller authorized the publication, on August 24, 2012, and August 31, 2012, respectively, of a notice of its intent to sell the Property and its desire to receive bids for said Property on or before September 13, 2012.

E. As of September 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

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 the following:

Brent Sheppard and Susan Sheppard
412 SB LLC
202 S. Michigan St., Suite 500
South Bend, IN 46601

Edward F. Bradley, Jr. ("Buyer's Agent")
Newmark Grubb Cressy & Everett
4100 Edison Lakes Parkway, Suite 350
Mishawaka, Indiana 46545

2. PURCHASE PRICE AND EARNEST MONEY DEPOSIT

A. Purchase Price. The purchase price for the Property shall be Twenty Thousand Dollars (\$20,000.00) (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 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 the Earnest Money Deposit shall become non-refundable.

D. Liquidated Damages. If Seller complies with its obligations hereunder and Buyer, not having terminated this Agreement during the Due Diligence Period in accordance with Section 3 below, fails to purchase the Property on or before the Closing Date, the Earnest Money Deposit shall be forfeited by Buyer and retained by Seller as liquidated damages in lieu of any other damages.

3. BUYER'S DUE DILIGENCE

A. Investigation. Buyer and Seller have made and entered into this Agreement based on their mutual understanding that Buyer intends to use the Property for a surface parking lot serving the building located at 412 S. Lafayette Boulevard lying immediate south of and abutting the Property (the "JPR Building"), in accordance with all applicable laws and the terms of this

Agreement (the “Buyer’s Use”). Seller acknowledges that Buyer’s determination whether Buyer’s Use is feasible requires investigation into various matters (Buyer’s “Due Diligence”). 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. Due Diligence Period. Buyer shall have a period of ninety (90) days following the Contract Date to complete its examination of the Property in accordance with this Section 3 (the “Due Diligence Period”).

C. Authorizations During Due Diligence Period. During the Due Diligence Period, Seller authorizes Buyer, 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. 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, and Buyer shall be entitled to a full refund of the Earnest Money Deposit.

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 the full amount of the Purchase Price upon delivery and recordation of a special warranty deed (the "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.

7. REVIEW OF TITLE COMMITMENT AND SURVEY

Buyer shall give Seller written notice, within twenty (20) days after the Contract Date, of any objections to the Title Commitment or Survey. 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 the Due Diligence Period, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Due Diligence Period, in which case the Earnest Money Deposit shall be refunded to Buyer. If Buyer fails to so terminate this Agreement, then such objections shall constitute "Permitted Encumbrances" as of the expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to such 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 and Buyer's Agent at their respective addresses stated in Section 1 above. Either Party may, by written notice, modify its address for future notices.

10. CLOSING

A. Timing of Closing. Unless this Agreement is earlier terminated, the Closing shall be held at the office of the Title Company, and the Closing Date shall be a mutually agreeable date not later than thirty (30) 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 the Deed, in the form attached hereto as **Exhibit B**, conveying the Property to 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 (or pro forma policy) to Buyer in accordance with Section 6 above.

(2) Possession of the Property shall be delivered to the Buyer at Closing, in the same condition as it existed 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, before the Closing Date, Seller has received and the City's Planning Department has approved, in its sole discretion, Buyer's design, plans, and specifications for lot improvements and landscaping on the Property consistent with City standards (Buyer's "Lot Improvements"), which Lot Improvements will cost up to, but no more than, One Hundred Twenty Thousand Dollars (\$120,000.00).

(2) Buyer shall have no obligation to complete the transaction contemplated in this Agreement unless, on or before the Closing Date, Buyer has acquired or will acquire ownership of the JPR Building (as defined above).

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, if appropriate in accordance with the terms of this Agreement.

D. Closing Costs. Buyer and Seller shall equally split 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 (a) to expend an amount up to, but not to exceed, One Hundred Twenty Thousand Dollars (\$120,000.00) to complete Buyer's Lot Improvements in accordance with the design, plans, and specifications approved by the City's Planning Department under Section 10.C(1) above; and (b) to expend no less than Two Hundred Thousand Dollars (\$200,000.00) to complete Buyer's improvements to the JPR Building in accordance with all applicable laws and regulations (Buyer's "Building Improvements") (collectively, Buyer's "Development Obligations"). Promptly upon completing its Lot Improvements and Building Improvements, 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 and/or the JPR Building to ensure that the Lot Improvements and the Building Improvements were completed satisfactorily.

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, Seller will issue to Buyer a certificate acknowledging such completion and releasing Seller's reversionary interest in the Property (the "Certificate of Completion"). 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 re-vest 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 set forth in the foregoing sentence.

12. RIGHT OF FIRST REFUSAL

Upon the Closing, Buyer hereby grants to Seller (and the City) a right of first refusal to purchase the Property, or any portion thereof, in accordance with the terms of this Section 12. If, at any time on or after the Closing Date, Buyer receives a bona-fide offer from a third party to purchase the Property, or any part of the Property, and/or the JPR Building (as such parcels may be

combined, replatted, or subdivided following the Closing Date), Buyer will immediately provide written notice of such offer to Seller (the "Notice of Offer"). The Notice of Offer will state (a) the name and address of the prospective purchaser and contact information of the prospective purchaser's representative, (b) the price offered by the prospective purchaser, (c) a precise legal description of the real property to be purchased by the prospective purchaser, and (d) any conditions the prospective purchaser has placed on his, her, or its purchase of said real property. Seller (or the City) will have forty-five (45) days from the date the Notice of Offer is received by Seller in which to make an alternative proposal for Seller's purchase of the real property described in the Notice of Offer (the "City's Proposal"). From the date of its receipt of the City's Proposal, Buyer will have thirty (30) days to accept or reject the City's Proposal (as the same may be amended during such thirty-day period). In the event Buyer accepts the City's Proposal, Buyer will reject the third party's offer and proceed to negotiate in good faith the terms of an appropriate purchase and sale agreement with Seller (or the City) for the conveyance of the real property to Seller, or the City, as the case may be. Any conveyance of all or a part of the Property by Buyer to a third party without first observing the requirements of this Section 12 or otherwise violating Seller's right of first refusal will be null and void and of no force or effect. To place of public record Seller's right of first refusal under this Section 12, the Parties agree to execute the memorandum attached hereto as **Exhibit C** (the "Memorandum of Right of First Refusal") on the Closing Date. The Memorandum of Right of First Refusal will be recorded in the Office of the Recorder of St. Joseph County immediately after the Deed, and Buyer will pay all costs of recording the Memorandum of Right of First Refusal.

13. 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.

14. 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.

15. REMEDIES

Upon any default in or breach of this Agreement by either Party, the defaulting Party will proceed immediately to cure or remedy such default within thirty (30) days after receipt of written notice of such default or breach from the non-defaulting Party, or, if the nature of the default or breach is such that it cannot be cured within thirty (30) days, the defaulting Party will diligent pursue and prosecute to completion an appropriate cure within a reasonable time. In the event of a default or breach that remains uncured for longer than the period stated in the foregoing sentence, the non-

defaulting Party may terminate this Agreement, commence legal proceedings, including an action for specific performance, or pursue any other remedy available at law or in equity. All the Parties' respective rights and remedies concerning this Agreement and the Property are cumulative.

16. 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 harmless one another from any claim for commissions in connection with the transaction contemplated in this Agreement.

17. 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.

18. ENTIRE AGREEMENT

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

19. ASSIGNMENT

Buyer and Seller agree that this Agreement or any of Buyer's rights hereunder may not be assigned by Buyer, in whole or in part, without the prior written consent of Seller, unless the assignee is another entity wholly owned by Brent Sheppard and Susan Sheppard, under which circumstance Buyer will not be required to receive Seller's prior written consent but Buyer must provide Seller written notice of such anticipated assignment at least fifteen (15) days in advance. 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. In the event Buyer assigns or attempts to assign any of its rights in this Agreement or the Property before Seller's issuance of a Certificate 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 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 will be made on the condition subsequent set forth in the foregoing sentence.

20. 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.

21. 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, 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:

412 SB, LLC, an Indiana limited liability company

By:

Printed: Brent Sheppard
Its: Member

SELLER:

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

By:

David Varner, Vice President

ATTEST:

By:

Donald E. Inks, Secretary

EXHIBIT A

Description of Property

Lot Numbered Forty-nine (49) and a parcel of land 21 feet in width, North and South, taken off of and from the entire North side of Lot Numbered Fifty (50), all as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City, of South Bend.

Commonly known as 402 S. Lafayette Blvd., South Bend, Indiana
Parcel Key Number 018-3015-0552

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 412 SB LLC, an Indiana limited liability company with its registered office at 412 S. Lafayette Blvd., South Bend, Indiana 46601 (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 in St. Joseph County, Indiana (the "Property"):

Lot Numbered Forty-nine (49) and a parcel of land 21 feet in width, North and South, taken off of and from the entire North side of Lot Numbered Fifty (50), all as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City, of South Bend.

Commonly known as 402 S. Lafayette Blvd., South Bend, Indiana
Parcel Key Number 018-3015-0552

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 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 February 11, 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 19 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 revert 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 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 revert 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 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:

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.

EXHIBIT C

Form of Memorandum of Right of First Refusal

MEMORANDUM OF RIGHT OF FIRST REFUSAL

This Memorandum of Right of First Refusal (this “Memorandum”) is dated as of _____, 2016, by and between the South Bend Redevelopment Commission, governing body of the Department of Redevelopment of the City of South Bend, Indiana (“Seller”), and 412 SB LLC, an Indiana limited liability company with its registered office at 412 S. Lafayette Blvd., South Bend, Indiana 46601 (“Buyer”) (each a “Party” and together the “Parties”).

RECITALS

WHEREAS, as of February 11, 2016, Buyer and Seller entered into an Agreement To Buy And Sell Real Estate (the “Agreement”) for the following real estate situated in the City of South Bend, County of St. Joseph and State of Indiana (the “Property”):

Lot Numbered Forty-nine (49) and a parcel of land 21 feet in width, North and South, taken off of and from the entire North side of Lot Numbered Fifty (50), all as shown on the recorded Plat of Samuel Martin’s Addition to the Town, now City, of South Bend.

Commonly known as 402 S. Lafayette Blvd., South Bend, Indiana
Parcel Key Number 018-3015-0552

WHEREAS, the Parties desire to place their interests in the Property as a matter of public record.

NOW, THEREFORE, the Parties agree as follows:

1. Pursuant to Section 12 of the Agreement, upon Seller’s conveyance of the Property to Buyer on the date hereof, Buyer granted to Seller and to the City of South Bend (the “City”) a right of refusal in connection with a future prospective sale of the Property or any part thereof.
2. Seller (or the City) may submit to Buyer a proposal to purchase the Property in accordance with its rights and the procedures stated in Section 12 of the Agreement.
3. Any sale of the Property, or any part of the Property, in violation of Seller’s (or the City’s) right of first refusal will be null and void and of no force or effect.
4. The recitals set forth above are true and correct and are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date first above written.

SOUTH BEND REDEVELOPMENT COMMISSION, governing body of the South Bend Department of Redevelopment of the City of South Bend, Indiana

By: _____
David Varner, President

ATTEST:

By: _____
Donald E. Inks, Secretary

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared David Varner and Donald E. Inks, known by me to be the Vice President and Secretary, respectively, of the South Bend Redevelopment Commission, and who, in such capacity, acknowledged the execution of the foregoing instrument as said Commission's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2016.

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

412 SB LLC, an Indiana limited liability company

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me known to be the _____ of 412 SB LLC, and acknowledged the execution of the foregoing instrument as said company's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2016.

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

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

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.