

OFFERING SHEET

Request for Offers to Purchase Real Property—Willow Road and S.R.2

St. Joseph County Redevelopment Commission

Offering Price/Minimum Bid: \$270,500.00

The St. Joseph County Redevelopment Commission (the “RDC”) hereby offers the property commonly known as 56340 Willow Road, 56458 Willow Road, and 31917 State Road 2, New Carlisle, Indiana 46552 (together, the “Property”), on the specified terms and conditions.

Description

The Property commonly known as 56340 Willow Road, 56458 Willow Road, and 31917 State Road 2, New Carlisle, Indiana 46552, and more particularly described as follows:

PARCEL 1:

Lot Numbered One (1) as shown on the recorded plat of Frontczak Minor Subdivision, Recorded May 17, 1991 as Document Number 9112523 in the Office of the Recorder of St. Joseph County, Indiana.

PARCEL 2:

A Lot or Parcel of Land in the Northwest Quarter of Section 12, Township 37 North, Range 1 West, bounded by a line running as follows:

Beginning at the Southwest Corner of the Northwest Quarter of said Section 12; thence running North along the West line of said Section, a distance of 40 rods; thence East 10 rods; thence South 40 rods; thence West 10 rods to the place of beginning.

PARCEL 3:

The West Half (1/2) of the Northwest Quarter (1/4) of Section Twelve (12), Township Thirty-Seven (37) North, Range One (1) West excepting therefrom a Lot or Parcel of land containing Sixty, (60) acres, taken off of and from the entire width of the North end thereof, and excepting further a Lot or Parcel of land described as follows:

Beginning at the Southwest Corner of the Northwest Quarter (1/4) of said Section 12; thence running North along the West line of said Section, a distance of forty (40) rods; thence East ten (10) rods; thence South forty (40) rods to the South line of said Northwest Quarter (1/4) of Section 12; thence West on said South line ten (10) rods to the place of beginning, the balance remaining containing seventeen and one half (17 1/2) acres more or less in St. Joseph County, Indiana.

Further excepting therefrom the following:

The permanent extinguishment of all rights and easements of ingress and egress to, from and across State Road 2 along the lines described as follows:

Commencing at the Southwest Corner of the West Half of the Northwest Quarter of Section 12, Township 37 North, Range 1 West, St. Joseph County, Indiana; thence North 89 Degrees 03 Minutes 39 Seconds East, 165.00 feet along the South line of said Quarter Section; thence North 0 Degrees 33 Minutes 26 Seconds East, 33.37 feet to the North boundary of S.R.2 and the point of beginning of this description; thence along the boundary of said S.R.2 Easterly, 194.35 feet along an arc to the left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing of South 89 Degrees 49 Minutes 19 Seconds East and a length of 194.35 feet to the terminus.

Also, beginning on said boundary 50.00 feet Easterly along said boundary (along an arc to the Left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing of South 89 Degrees 56 Minutes 40 Seconds East and a length of 50.00 feet) from the East end of the 194.34 foot course described above; thence along said boundary Easterly 5.00 feet along an arc to the Left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing South 89 Degrees 58 Minutes 19 Seconds East and a length of 5.00 feet to the terminus.

Also, beginning on said boundary 40.00 feet Easterly along said boundary (along an arc to the Left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing of South 89 Degrees 59 Minutes 40 Seconds East and a length of 40.00 feet) from the East end of the 5.00 foot course described above; thence along said boundary Easterly 823.20 feet along an arc to the Left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing of North 89 Degrees 34 Minutes 24 Seconds East and a length of 823.20 feet; thence North 89 Degrees 49 Minutes 04 Seconds East, 51.54 feet and terminating on the East line of said Half Quarter Section.

Proposal Evaluation Criteria

The RDC reserves the right to reject any and all bids, to waive any non-substantive formalities, and to make the award to the highest and best bidder. The RDC shall take into consideration the following factors:

1. The size and character of the improvements proposed to be made by the bidder with preference given to industrial uses and improvements.
2. The bidder's plans and ability to improve the real property with reasonable promptness.
3. Whether the real property when improved will be sold or rented.
4. The bidder's proposed sale or rental prices.
5. If the bid is submitted by a trust (as defined in Ind. Code § 30-4-1-1(a)), the bid must identify: (A) the Beneficiaries of the Trust; and (B) the Settlor empowered to revoke or modify the trust.
6. The experience, financial, and organizational capacity of the bidder in successfully planning and completing development projects of a similar type and scale.

7. The overall quality of the submission.

8. Any factors that will assure the RDC that the sale, if made, will further the execution of the redevelopment plan and best serve the interests of the community, from the standpoint of both human and economic welfare, including, but not limited to: (A) the extent to which the proposed development is consistent with the RDC's redevelopment goals; (B) the market and financial feasibility of the project; and (C) the public incentives requested and the anticipated ability of the project to secure necessary public and/or private funds.

9. The proposed purchase price.

The RDC may contract with a bidder in regard to these factors listed, and the contract may provide for the deposit of surety bonds, the making of good faith deposits, liquidated damages, the right of repurchase, or other rights and remedies if the bidder fails to comply with the contract.

Content of Proposal

Proposals should be submitted in the following order:

1. A completed, approved Cover Sheet (p.1)
2. An Executive Summary describing the bidder and the proposed use of the property and executed Proposal Form.
3. Description of the bidder's qualifications.
4. Detailed project description, including, but not limited to, projected uses and improvements planned, public infrastructure improvements needed, how the site will be accessed, etc.
5. Listing of similar projects, including: (A) nature, types and scopes of project; and (B) name(s), address(es), and telephone number(s) of person(s) who could be contacted as a reference.
6. Proposed timetable for implementation of use of property.
7. Proposed financing for use of property, as well as financial information of the bidder in sufficient detail to demonstrate capability to complete the project.
8. Proposals **MUST** be in a sealed envelope, which is clearly marked:

SEALED BID—INVITATION TO BID—WILLOW RD. AND S.R. 2

NOTICE TO BIDDERS

The St. Joseph County Redevelopment Commission will receive sealed bids from **June 21, 2022 beginning at 12:00 p.m. until July 12, 2022 at 9:00 a.m.** at its office at the County-City Building, 11th Floor, 227 W. Jefferson Blvd., South Bend, Indiana 46601 for the purchasing of the real estate hereinafter described:

Vacant Land at Willow Rd. and S.R. 2

Common Addresses: 56340 Willow Rd., 56458 Willow Rd., and 31917 State Road 2, New Carlisle, Indiana 46552

Parcel ID Numbers: 71-06-12-100-002.000-017; 71-06-12-100-003.000-017; and 71-06-12-100-004.000-017

Bids received will be opened and considered **on July 12, 2022 at 9:00 a.m.** at the regular meeting of the St. Joseph County Redevelopment Commission.

This Notice to Bidders is made pursuant to Ind. Code § 36-7-14-22(d). Bids will be subject to the conditions set forth in the statute and as set forth in the Offering Sheet available to bidders at <http://www.sjcindiana.com/1912/Properties-for-Sale>. This real estate is to be used for the highest and best use to benefit economic development for St. Joseph County, Indiana. No bid will be accepted if not marked received by **9:00 a.m. on Tuesday, July 12, 2022**. No partial bids will be accepted.

Bids submitted by a trust must identify each (A) Beneficiaries of the Trust; and (B) Settlor empowered to revoke or modify the trust.

The RDC reserves the right to reject any and all bids, to waive any non-substantive formalities, and to make the award to the highest and best bidder. The RDC shall take into consideration the following factors:

1. The size and character of the improvements proposed to be made by the bidder with preference given to industrial uses and improvements.
2. The bidder's plans and ability to improve the real property with reasonable promptness.
3. Whether the real property when improved will be sold or rented.
4. The bidder's proposed sale or rental prices.
5. If the bid is submitted by a trust (as defined in Ind. Code § 30-4-1-1(a)), the bid must identify: (A) the Beneficiaries of the Trust; and (B) the Settlor empowered to revoke or modify the trust.
6. The experience, financial, and organizational capacity of the bidder in successfully planning and completing development projects of a similar type and scale.
7. The overall quality of the submission.
8. Any factors that will assure the RDC that the sale, if made, will further the execution of the redevelopment plan and best serve the interests of the community, from the standpoint of both human and economic welfare, including, but not limited to: (A) the extent to which the proposed development is consistent with the RDC's redevelopment goals; (B) the market and financial feasibility of the project; and (C) the public incentives requested and the anticipated ability of the project to secure necessary public and/or private funds.
9. The proposed purchase price.

Upon the execution of a contract providing for the sale of the real estate to the successful bidder, a certified check representing the full payment, made payable to St. Joseph County shall be provided to the

RDC for the purpose of securing the sale of the subject real estate, and shall be submitted with the contract.

Bidders are encouraged to review instructions to bidders available online at <http://www.sjcindiana.com/1912/Properties-for-Sale>. **All bids must be submitted at the offices of the St. Joseph County Redevelopment Commission, County-City Building, 11th Floor, 227 W. Jefferson Blvd., South Bend, Indiana 46601.** For questions, please contact William Schalliol, Executive Director, at (574) 235-9812.

St. Joseph County Redevelopment Commission
By: William Schalliol, Executive Director

INSTRUCTIONS TO BIDDERS

The St. Joseph County Redevelopment Commission (the “RDC”) has prepared, and made available as part of this bid, an offering sheet describing the real estate being offered for sale. The offering sheet states that the minimum sales price of the property is **\$270,500.00**.

All bidders must have demonstrable experience in developing the property for the use intended.

A certified check payable to St. Joseph County, Indiana shall be submitted upon execution of the purchase contract for the sale of the real estate. Checks for costs associated with recording and other transaction costs must be included with the bid price. The RDC will record the deed upon the receipt of all signatures on the deed.

The RDC reserves the right to reject any or all bids or waive any deviation in the bidding which it deems to be in the best interest of St. Joseph County, Indiana.

Each bidder must submit a written bid to the RDC, County-City Building, 11th Floor, 227 W. Jefferson Blvd., South Bend, Indiana 46601. Each bid must contain those items described in the Offering Sheet, including but not limited to a completed Cover Sheet and Proposal Form as attached hereto. **Only bids utilizing the approved cover sheet and proposal form will be accepted. Failure to use the provided cover sheet template and proposal form will disqualify the bidder.** All bids are open for public inspection after bid opening. All bids received will be reviewed by the RDC on the date specified in the Notice to Bidders which is July 12, 2022.

COVER SHEET

Name:

Principal Office Address and, if different, Address of Principal Contact:

Email Address and Phone Number of Principal Contact:

WILLOW RD. AND S.R.2 PROPERTY BID

BID AMOUNT: \$_____

SIGNATURE: _____

PRINTED: _____

TITLE AND AUTHORITY: _____

PROPOSAL FORM

TO: St. Joseph County Redevelopment Commission
County-City Building, 11th Floor
227 W. Jefferson Blvd.
South Bend, Indiana 46601

Mr. Schalliol and the Redevelopment Commission:

The undersigned (the "Bidder") has familiarized itself with the present conditions on the subject site for the property more fully described on the Offering Sheet for the Willow Road and S.R.2 property issued by the St. Joseph County Redevelopment Commission ("RDC") on June 21, 2022, and with the documents: (1) Notice to Bidders; (2) Instruction to Bidders; (3) Proposal Form; and (4) Offering Sheet.

The Bidder certifies its desire to participate in the development of the said real estate pursuant to the federal, state, and local legislation, ordinances, regulations and usage referred to in the offering documents, and hereby offers and proposes to purchase the parcel of land identified in the offering documents (hereinafter referred to as the "Project Land").

Attached hereto are the documents required by the Offering Sheet to be included in the Bidder's bid.

Acceptance or rejection of this proposal shall be made on record at a regular meeting of the RDC. It is understood that the RDC reserves the right to reject any and all bids, to waive any non-substantive formalities and to make the award to the highest and best bidder, subject to the approval of the RDC.

The Bidder agrees to execute a contract for the purchase of the Project Land in the form submitted by the RDC and to submit with the purchase contract a Certified Check made payable to St. Joseph County, Indiana. The Bidder agrees to develop and use the above-identified parcel of land in conformity with any federal and state statutes and County ordinances applicable to the Bidder's improvement plan submitted herewith.

It is understood that the undersigned must pay the balance of its bid within thirty (30) days after a purchase contract for the Project Land is executed. **IT IS UNDERSTOOD IN THE EVENT A BIDDER DOES NOT PAY THE FULL BALANCE WITHIN THE DESIGNATED TIME PERIOD, THE EARNEST MONEY, IF ANY, IS FORFEITED BY THE BIDDER.** Upon closing, the Bidder shall accept the Project Land in "AS IS" condition with no warranties or representations other than warranty of title. The Bidder shall be responsible for the payment of all real property taxes assessed against the Project Land. The Project Land may not be sold to a person who is ineligible under Ind. Code § 36-1-11-16.

It is agreed that the good faith deposit of the Bidder may be refunded by the RDC and that the RDC may withdraw from the sale of the Project Land at any time prior to the conveyance of title and possession of said Project Land.

Dated this ___ day of _____, 2022.

Corporation, Firm or Company

Signature of Official

Title of Official

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made as of this ____ day of _____, 2022 (the "Effective Date"), by and between _____ (hereinafter referred to as "Buyer"), and the St. Joseph County Redevelopment Commission ("Seller").

Subject to the terms and conditions of this Agreement, Seller agrees to sell, and Buyer agrees to buy a certain tract of land legally described on Exhibit "A" attached hereto and hereby made a part hereof (the "Property").

1. **PURCHASE PRICE, POSSESSION.** The purchase price for the Property is _____ (\$_____) (the "Purchase Price"). The Purchase Price shall be payable by wire transfer on the Closing Date (as herein defined), at which time Seller shall deliver possession of the Property to Buyer. The purchase of the Property is subject to all of the conditions contained herein below.

2. **INTENTIONALLY DELETED.**

3. **SURVEY AND ENVIRONMENTAL REPORT.** Buyer, at its sole cost and expense, may obtain a survey ("Survey") and Phase I Environmental Report ("Environmental Report") of the Property.

4. **TITLE COMMITMENT; TITLE POLICY.** Buyer shall obtain, at its sole cost and expense, a commitment for Owner's ALTA Title Insurance Policy ("Commitment"), issued by Fidelity National Title Insurance Company, 4215 Edison Lakes Pkwy, Suite 115, Mishawaka, Indiana 46545 or other title company to be agreed upon by the parties (the "Title Company") setting forth the state of title to the Property and all exceptions and restrictions of record including deed restrictions, liens, and covenants. Along with such Commitment, the Title Company shall also furnish Buyer with copies of all documents affecting the Property and reflected in the Commitment (collectively, the "Title Documents"). Any title endorsements required by Buyer or any lender of Buyer shall be at the sole cost and expense of Buyer.

In the event any exceptions appear in the Commitment, Title Documents, or Survey other than the standard exceptions, that are unacceptable to Buyer, then Buyer shall, on or before three days before the end of the Feasibility Period, notify Seller in writing of such fact. Seller may, at Seller's option, commit to eliminate or modify such unacceptable exceptions to the reasonable satisfaction of Buyer. If Seller is unwilling or unable to commit to cure such objections within five (5) business days following Seller's receipt of Buyer's objections, Buyer may either (a) terminate this Agreement by notice in writing to Seller at any time prior to the expiration of the Feasibility Period or (b) elect to accept title subject to such exceptions. Any exceptions shown on the Commitment and not timely objected to by Buyer, and any exceptions subject to which Buyer expressly agrees to accept title, shall hereinafter be collectively referred to as "Permitted Exceptions."

5. **FEASIBILITY PERIOD.** From the Effective Date through 5:00 P.M, on that date which is fifteen (15) days after the Effective Date ("Feasibility Period"), Buyer shall have the opportunity to conduct and make such feasibility studies as Buyer deems necessary, at Buyer's sole cost and expense, including but not limited to engineering studies, soil analysis, core drilling,

zoning studies, mechanical studies, sewer studies, environmental and ecological studies, economic studies and conduct any and all physical inspections of the Property and an investigation as to the status of title of the Property. Seller shall cooperate with Buyer and allow Buyer full access during reasonable business hours to the Property for the purpose of such inspections. Buyer shall notify Seller no less than forty-eight (48) hours in advance of making any such inspections. Buyer hereby agrees to indemnify and hold Seller harmless from and against any loss or damage arising from any entry onto the Property by Buyer, Buyer's agents, employees, contractors and subcontractors.

6. **CLOSING DATE.** The Closing on the Property shall occur on or before _____ (“Closing Date”).

7. **DOCUMENTS TO BE DELIVERED BY SELLER.** Unless otherwise expressly provided herein, within five (5) business days following the Effective Date, Seller shall deliver to Buyer, to the extent in Seller's possession, if not previously provided, copies of (i) any tests, studies, reports or analyses of the Property, including but not limited to soil studies and environmental assessments; and (ii) any and all permits or approvals issued by any governmental or quasi-governmental authorities having jurisdiction over the Property.

8. **REPRESENTATIONS, WARRANTIES AND COVENANTS.** Seller represents, warrants, and covenants to Buyer that as of the date hereof:

(a) Seller has good and marketable fee simple title, free and clear of all liens, except for Permitted Exceptions and those liens set forth on the Commitment;

(b) Seller has full power and authority to sell the Property;

(c) Seller enjoys exclusive peaceful and undisturbed possession of the Property;

(d) to Seller's Knowledge, the Property is not subject to any pending or threatened mechanics' or materialmen's lien or liens;

(e) to Seller's Knowledge, there is no pending, nor contemplated, threatened, or anticipated (i) condemnation of any part of the Property, (ii) widening, change of grade or limitation on the use of streets, roads or highways abutting the Property, (iii) special tax or assessment to be levied against the Property, or (iv) change in the zoning classification of the Property;

(f) There are no purchase options or other agreements in effect for the Property which provide for or grant any property or occupancy rights or interests in the Property.

The continued validity in all material respects of all representations, covenants and warranties set forth in this Agreement shall be a condition precedent to the performance of Buyer's obligations hereunder. All representations and warranties set forth in this Agreement are made as of the Effective Date.

9. **CONDITIONS PRECEDENT.** This Agreement and Buyer's obligation to close are subject to the following additional express conditions precedent set forth below.

Notwithstanding anything to the contrary which may be contained herein, each of the conditions precedent may be waived in writing by Buyer, such conditions being intended for the exclusive protection and benefit of Buyer. If any of the conditions precedent to Buyer's obligations set forth in this Paragraph are not fulfilled at or within the times set forth herein for the fulfillment thereof (after any applicable cure period), or not otherwise waived in writing by Buyer, Buyer may terminate this Agreement by notice to Seller:

(a) The continued validity of each and all of the representations, warranties and covenants of Seller contained in this Agreement in all material respects.

(b) The delivery of the Closing documents required to be delivered by Seller described in this Agreement.

10. **PRORATIONS AND OTHER CLOSING COSTS.** At closing, Seller shall pay or credit on the Purchase Price all real estate taxes that are a lien for years prior to the Closing Date and a portion of such taxes for the year of the Closing Date prorated through the Closing Date and based on a 365-day year and, if undetermined, on the most recent available rate and valuation, giving effect to applicable exemptions. Fees for recording the deed and any other instrument and conveyance fees shall be paid by Buyer. All other closing costs shall be split equally among Buyer and Seller unless set forth otherwise herein.

11. **DEED/CLOSING MECHANICS.** At Closing, Seller shall deliver to Buyer the following items as to the Property, which items shall be in form and substance satisfactory to Buyer:

(a) an ALTA Owner's Policy of Title Insurance, at Buyer's expense, issued in Buyer's favor in the full amount of the Purchase Price, insuring Buyer's fee simple title to the Property in the form required under Paragraph 4, subject only to the Permitted Exceptions;

(b) a warranty deed, in form suitable for recording, conveying good and marketable fee simple title to the Property to Buyer, free and clear of all liens and encumbrances subject only to the Permitted Exceptions;

(c) possession of the Property;

(d) such executed documents as are necessary or appropriate to allow Buyer to comply with Section 1445 of the Internal Revenue Code regarding tax withholding on the sale of U.S. real property by a foreign Person or such executed certificates or affidavits as are appropriate regarding exemption from such requirements; and

(e) such other executed documents or instruments as in the reasonable opinion of the Title Company may be necessary or desirable to effectuate the Closing.

12. **DEED/CLOSING MECHANICS – BUYER.** On or prior to the Closing Date, or as otherwise provided, Buyer shall do or perform the following:

(a) Cause to be delivered to Seller the Purchase Price; and

(b) Execute and deliver such other documents or instruments as in the reasonable opinion of the Title Company may be necessary or desirable to effectuate the Closing.

13. **DEFAULT.** If Seller is unable to convey title to the Property in accordance with the conditions in this Agreement, or if there has occurred a material breach of any of Seller's representations, warranties, and/or covenants, or if the conditions precedent to Buyer's performance specified herein have neither been satisfied nor waived by Buyer, Buyer may, at Buyer's option, terminate this Agreement by written notice forwarded to Seller on or prior to the Closing Date or Buyer may continue to respect and abide by the terms of the Agreement. If Seller fails to consummate this Agreement for any reason (other than Buyer's default or a termination of this Agreement by Buyer pursuant to a right to do so expressly provided for in this Agreement), Buyer shall have the right, as its sole and exclusive remedy, to either (i) terminate this Agreement, or (ii) enforce this Agreement by an action for specific performance.

If Buyer fails to consummate this Agreement for any reason (other than Seller's default or a termination of this Agreement by Seller or Buyer pursuant to a right to do so expressly provided for in this Agreement), Seller may pursue any remedy available at law or in equity as a result of Buyer's default including, without limitation, the right to recover damages against Buyer for Buyer's default.

Notwithstanding the provisions above, no default by either party hereto shall result in a termination or limitation of any rights of such party hereunder unless and until the other party shall have notified the defaulting party in writing of said default, and the defaulting party shall have failed to cure said default within three (3) business days after the receipt of said written notice.

14. **REAL ESTATE COMMISSIONS.** Buyer and Seller each warrant and represent to the other that neither party has used the services of a real estate agent or broker in connection with the purchase and sale of the Property and no broker's commission, finder's fee, or other like charges are or shall be payable with respect to the transactions contemplated hereby. Each party hereby agrees to indemnify and hold the other party harmless from and against any and all liability, claims, demands, damages or expenses of any kind, including attorneys' fees, arising from or connected with any broker's commission, finder's fee, or other like charges claimed to be due any person arising from such party's conduct with respect to the transactions contemplated hereby. The provisions of this Paragraph shall survive closing.

15. **CONDEMNATION/CASUALTY.**

(a) In the event that any time prior to the Closing, proceedings are instituted for the appropriation of any part of the Property by the power of eminent domain or condemnation, Seller agrees to immediately notify Buyer of such action and Buyer, at Buyer's election, may, not later than the later to occur of the Closing Date or fifteen (15) days after the notice is given (the Closing Date shall be automatically extended if necessary), by written notice to Seller, terminate this Agreement. In the event that Buyer shall not elect to terminate this Agreement, Buyer shall receive a credit against the Purchase Price in the amount of any awards or other proceeds actually received by Seller prior to the Closing for such taking, and at the Closing, any award actually received by Seller in excess of the Purchase Price shall be paid to Buyer; and at the Closing, Seller shall also assign to Buyer all of Seller's right, title and interest in and to any future awards by reason of such taking. If such eminent domain or condemnation proceedings are instituted after

the Effective Date, but on or prior to the waiver of the expiration date of the Feasibility Period, either party may elect to terminate the Agreement, in which case Seller shall be entitled to any award.

(b) In the event that any time after the Effective Date and prior to the Closing, the improvements on the real estate constituting part of the Property are materially damaged by fire or casualty, Seller agrees to immediately notify Buyer of such fire or casualty and Buyer, at Buyer's election, may, not later than the later to occur of the Closing Date (the Closing Date shall be automatically extended if necessary) or fifteen (15) days after the notice is given, by written notice to Seller, terminate this Agreement. In the event that Buyer shall not elect or does not have the right to elect to terminate this Agreement, Buyer shall receive a credit against the Purchase Price in the amount of any insurance proceeds actually received by Seller prior to the Closing for fire or casualty (other than proceeds of rent loss or business interruption insurance for periods to the Closing) and the amount of any deductible under such insurance; and at the Closing, Seller shall also assign to Buyer all of Seller's right, title and interest in and to any insurance proceeds by reason of such fire or casualty (other than rent loss and business interruption insurance attributable to periods prior to Closing). For purposes of this Section, the term "material" shall mean damage to the Property, the cost of affecting a repair would reasonably be expected to exceed FIFTEEN THOUSAND and NO/100 DOLLARS (\$15,000.00) and the term "non-material" shall mean all other damage to the Property. In the event a non-material portion of the improvements are damaged or destroyed by fire or casualty prior to the Closing, Buyer shall be obligated to proceed with the Closing, without adjustment of any kind to the Purchase Price; provided, however, that at Closing Seller shall assign all of its right, title and interest in and to such insurance proceeds, if any, as the same are paid or payable on account of such casualty (except that insurance proceeds on account of rental and/or business interruption coverage shall be prorated as of the Closing) and Buyer shall be entitled to a credit equal to the amount of insurance deductibles, if any. In no event shall Seller be required to repair or restore the Property after a fire or casualty.

16. **ENTIRE AGREEMENT AND DISCLAIMERS.**

(a) This Agreement contains the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties with respect to the subject matter hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged herein. This Agreement may not be amended or modified except in writing signed by both parties hereto.

(b) BUYER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY CONTAINED IN THIS AGREEMENT, NEITHER SELLER NOR ANYONE ACTING FOR OR ON BEHALF OF SELLER, HAS MADE ANY REPRESENTATION, STATEMENT, WARRANTY, OR PROMISE TO BUYER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE CONCERNING THE CONVEYANCE OF THE PROPERTY, THE PHYSICAL ASPECTS AND CONDITION OF ANY OF THE PROPERTY WHICH IS THE SUBJECT OF THIS AGREEMENT, ANY DIMENSIONS OR SPECIFICATIONS OF ANY OF THE PROPERTY, THE FEASIBILITY, DESIRABILITY OR CONVERTIBILITY OF ANY OF THE PROPERTY INTO ANY PARTICULAR USE, OR THE PROJECTED INCOME OR EXPENSES FOR THE PROPERTY; AND THAT IN ENTERING INTO THIS AGREEMENT, BUYER HAS NOT RELIED ON ANY REPRESENTATION, STATEMENT OR WARRANTY

OF SELLER, OR ANYONE ACTING FOR OR ON BEHALF OF SELLER, ALL OF WHICH ARE TO BE INDEPENDENTLY VERIFIED BY BUYER; AND THAT BUYER IS PURCHASING THE PROPERTY ON ITS OWN INSPECTION AND EXAMINATION THEREOF AND OF ALL IMPROVEMENTS LOCATED THEREON OR USED IN CONNECTION THEREWITH; AND THAT BUYER IS PURCHASING SUCH PROPERTY ON THE CLOSING DATE IN ITS THEN "AS IS" AND "WHERE IS" PHYSICAL CONDITION AND ITS THEN "AS IS" AND "WHERE IS" STATE OF REPAIR WITH ALL FAULTS AND WITHOUT RECOURSE AGAINST SELLER; AND THAT BUYER DOES HEREBY WAIVE, AND SELLER DOES HEREBY DISCLAIM, ALL WARRANTIES OF ANY TYPE OR KIND WHATSOEVER WITH RESPECT TO THE PROPERTY, INCLUDING, BY WAY OF DESCRIPTION, BUT NOT LIMITATION, THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TENANTABILITY, HABITABILITY AND USE. WITHOUT LIMITING THE FOREGOING, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY DAMAGE OR LOSS (INCLUDING, BUT NOT LIMITED TO LIABILITIES, COSTS AND EXPENSES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER IN CONTRACT OR IN TORT, OR BY REASON OF ANY LOCAL, STATE, OR FEDERAL LAWS OR REGULATIONS (INCLUDING BUT NOT LIMITED TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, 42 U.S.C. SECTION 9601, ET SEQ., AND ALL AMENDMENTS THERETO). IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) Buyer waives any claim for damages because of defects, whether known or unknown, latent or otherwise.

(d) Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical conditions of the Property and Buyer assumes the risk that adverse physical conditions may not have been revealed by its investigation.

(e) Buyer waives the right to recover from Seller and its directors, officers, employees and agents any and all damages, losses, liabilities, costs or expenses whatsoever (including, reasonable attorney fees), and claims therefore, whether direct or indirect known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or connected with the physical condition of the Property or any environmental condition affecting the Property.

(f) As additional consideration, as of the Closing, Buyer assumes liability for, and forever releases Seller from, all claims arising from the ownership, use, possession or condition of the Property, regardless of whether (i) such claim is brought against Buyer or Seller, (ii) such claim arose from circumstances, events or actions before or after the Closing, or (iii) such circumstances, events, actions or claims are foreseeable or unforeseeable, known or unknown, contingent or otherwise (the "Assumed Liabilities"). Without limiting the foregoing, the Assumed Liabilities include, (1) all liability to any government or governmental agency relating to the environmental condition of the Property, (2) any liability for injury to any person, property or otherwise resulting from any pollution of the air, water or soil, and (3) any liabilities under any federal, state, or local law or regulation, including but not limited to, the Comprehensive

Environmental Response Compensation and Liability Act, 42 U.S.C., Section 9601 et seq. and any amendment thereto.

(g) The provisions of Paragraph 16 (b), (c), (d), (e) and (f) shall survive Closing and delivery of the deed without limitation and shall not be merged thereby.

17. **MISCELLANEOUS PROVISIONS.**

(a) **Assignment.** Buyer may not assign Buyer's right in this Agreement without Seller's express, written consent.

(b) **Applicable Laws and Governmental Authority.** "Applicable Laws" shall mean all laws, statutes, orders, rules, and regulations of Governmental Authorities, and judgments, decisions or orders entered by any Governmental Authority applicable to Seller, including but not limited to Environmental Laws. "Environmental Law" shall mean all Applicable Laws concerning hazardous materials or the protection of the environment or natural resources. "Governmental Authority" shall mean any U.S., state, local or foreign governmental, regulatory or administrative body, agency or authority, any court or judicial authority or arbitration tribunal, whether national, Federal, state or local or otherwise, or any Person lawfully empowered by any of the foregoing to enforce or seek compliance with any Applicable Law.

(c) **Notices.** All notices required or desired to be given hereunder shall be deemed given (i) if and when delivered personally, or (ii) on the next business day after being deposited with a national overnight courier service, or (iii) on the next business day after being deposited in the United States certified or registered mail, return receipt requested, postage prepaid, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith::

(i) If to Seller: Bill Schalliol
Executive Director of Economic Development
St. Joseph County, Indiana
227 W. Jefferson Blvd.
South Bend, Indiana 46601
Email: BSchalliol@sjcindiana.com

With a copy to: Thorne Grodnik, LLP
420 Lincolnway West
Mishawaka, Indiana 46637
Attention: Phillip A. Garrett
Email: pgarrett@tglaw.us

(ii) If to Buyer: _____

Email: _____

With a copy to: _____

Email: _____

(d) **Headings**. The headings, captions, numbering system, etc. are inserted only as a matter of convenience and may under no circumstances be considered in interpreting the provisions of the Agreement.

(e) **Binding Effect**. All of the provisions of this Agreement are hereby made binding upon the personal representatives, heirs, successors, and assigns of both parties hereto.

(f) **Time of Essence**. Time is of the essence of this Agreement.

(g) **Unenforceable or Inapplicable Provisions**. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

(h) **Counterparts**. This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

(i) **Applicable Law, Place of Performance**. This Agreement shall be construed under and in accordance with the laws of the State of Indiana. All obligations contained in this Agreement are to be performed in St. Joseph County, State of Indiana. Any disputes related to this Agreement shall be heard by the state courts located in St. Joseph County, Indiana, and the parties hereby expressly consent to the sole and exclusive jurisdiction of these courts.

(j) **Buyer's Waiver of Conditions Precedent**. Buyer may, at Buyer's sole option, waive any of the conditions precedent to Buyer's performance specified in this Agreement by giving written notice to Seller at any time on or before the Closing Date.

(k) **Survival Clause**. The representations, warranties and covenants contained herein shall not merge in the deed or any other document and shall survive the Closing.

(l) **Closing Date**. In the event that the Closing Date or any other deadline date described in this Agreement falls on a weekend or a holiday, the Closing Date or other deadline date shall be deemed to be the next business day.

(m) **Execution**. The Person(s) executing this Agreement on behalf of Seller and Buyer hereby represent and warrant that such Person(s) are duly authorized to do so and have all necessary legal authority to and by such execution do hereby, bind Seller to the terms hereof.

(n) **Attorneys' Fees and Costs**. In the event legal action is instituted to interpret or enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party the prevailing party's cost and attorney's fees, including,

without limitation, all costs and fees that are incurred in any trial, on any appeal and/or in any bankruptcy proceeding.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

SELLER:

St. Joseph County Redevelopment Commission

By: _____

Its: _____

BUYER:

By: _____

Name: _____

Title: _____

EXHIBIT A TO PURCHASE AGREEMENT

Legal Description of the Property

PARCEL 1:

Lot Numbered One (1) as shown on the recorded plat of Frontczak Minor Subdivision, Recorded May 17, 1991 as Document Number 9112523 in the Office of the Recorder of St. Joseph County, Indiana.

PARCEL 2:

A Lot or Parcel of Land in the Northwest Quarter of Section 12, Township 37 North, Range 1 West, bounded by a line running as follows:

Beginning at the Southwest Corner of the Northwest Quarter of said Section 12; thence running North along the West line of said Section, a distance of 40 rods; thence East 10 rods; thence South 40 rods; thence West 10 rods to the place of beginning.

PARCEL 3:

The West Half (1/2) of the Northwest Quarter (1/4) of Section Twelve (12), Township Thirty-Seven (37) North, Range One (1) West excepting therefrom a Lot or Parcel of land containing Sixty, (60) acres, taken off of and from the entire width of the North end thereof, and excepting further a Lot or Parcel of land described as follows:

Beginning at the Southwest Corner of the Northwest Quarter (1/4) of said Section 12; thence running North along the West line of said Section, a distance of forty (40) rods; thence East ten (10) rods; thence South forty (40) rods to the South line of said Northwest Quarter (1/4) of Section 12; thence West on said South line ten (10) rods to the place of beginning, the balance remaining containing seventeen and one half (17 1/2) acres more or less in St. Joseph County, Indiana.

Further excepting therefrom the following:

The permanent extinguishment of all rights and easements of ingress and egress to, from and across State Road 2 along the lines described as follows:

Commencing at the Southwest Corner of the West Half of the Northwest Quarter of Section 12, Township 37 North, Range 1 West, St. Joseph County, Indiana; thence North 89 Degrees 03 Minutes 39 Seconds East, 165.00 feet along the South line of said Quarter Section; thence North 0 Degrees 33 Minutes 26 Seconds East, 33.37 feet to the North boundary of S.R.2 and the point of beginning of this description; thence along the boundary of said S.R.2 Easterly, 194.35 feet along an arc to the left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing of South 89 Degrees 49 Minutes 19 Seconds East and a length of 194.35 feet to the terminus.

Also, beginning on said boundary 50.00 feet Easterly along said boundary (along an arc to the Left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing of South 89 Degrees 56 Minutes 40 Seconds East and a length of 50.00 feet) from the East end of the 194.34 foot course described above; thence along said boundary Easterly 5.00 feet along an arc to the Left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing South 89 Degrees 58 Minutes 19 Seconds East and a length of 5.00 feet to the terminus.

Also, beginning on said boundary 40.00 feet Easterly along said boundary (along an arc to the Left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing of South 89 Degrees 59 Minutes 40 Seconds East and a length of 40.00 feet) from the East end of the 5.00 foot course described above; thence along said boundary Easterly 823.20 feet along an arc to the Left and having a radius of 57,225.78 feet and subtended by a long chord having a bearing of North 89 Degrees 34 Minutes 24 Seconds East and a length of 823.20 feet; thence North 89 Degrees 49 Minutes 04 Seconds East, 51.54 feet and terminating on the East line of said Half Quarter Section.