



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: January 24, 2019

FROM: David Relos, Property Development Manager

SUBJECT: Agreement to Buy and Sell Real Estate (Marion / Scott St.)

Which TIF? (circle one) **River West**; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST:

Resolution No. 3466, approved by the Commission on December 13, 2018, declared six properties blighted, unsafe, abandoned, foreclosed, or structurally damaged. This Agreement to Buy and Sell is for four of those properties, all of which have been vacant for years. Purchase price of these four lots is \$8,000, with closing scheduled by March 31, 2019.

Staff requests approval of the Agreement To Buy and Sell Real Estate for these properties. EDIT funding approved for Community Investment will be used for the acquisition.

INTERNAL USE ONLY: Project Code: _____;

Total Amount **new**/change (inc/dec) in budget: _____; Breakdown:

Costs: Demolition Amt: _____; Other Prof Serv Amt _____;

Acquisition of Land/Bldg (circle one) Amt: \$8,000; Street Const Amt _____;

Building Imp Amt _____; Sewers Amt _____; Other (specify) Amt: _____.

Going to BPW for Contracting? **N**

Is this item ready to encumber now? **No** Existing PO# _____ Inc/Dec \$ _____

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

1400S County-City Building | 227 W. Jefferson Blvd. | South Bend, Indiana 46601 | p 574.235.9371 | f 574.235.9021 | www.southbendin.gov

AGREEMENT TO BUY AND SELL REAL ESTATE

This Agreement To Buy And Sell Real Estate ("Agreement") is made by and between Richard Wayne Knight of 16035 Darden Road, Granger, Indiana 46530 ("Seller") and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission of Ste. 1400 S., 227 W. Jefferson Blvd., South Bend Indiana 46601 ("Buyer") (each a "Party" and together the "Parties").

RECITALS

A. Buyer exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being Indiana Code 36-7-14 (the "Act").

B. Pursuant to Section 19.5 of the Act, Buyer may acquire property that meets certain conditions from a willing seller without an appraisal (the "Acquisition Section").

C. In furtherance of its purposes under the Act, Buyer desires to purchase from Seller certain real properties located in South Bend, Indiana (the "City"), and more particularly described in attached Exhibit A (the "Properties").

D. Seller desire to sell the Properties to the Buyer in accordance with the Acquisition Section and 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. PURCHASE AND SALE OBLIGATION

Seller agrees to sell the Properties to the Buyer upon the terms and conditions set forth herein. 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 (the "Contract Date").

2. PURCHASE PRICE

The purchase price for the Properties shall be Eight Thousand Dollars (\$8,000.00) (the "Purchase Price"), payable by Buyer to Seller as described in Section 7 (the "Closing," the date of which is the "Closing Date").

3. BUYER'S DUE DILIGENCE

A. Investigation. Seller acknowledges that Buyer's determination to purchase the Properties requires a process of investigation (Buyer's "Due Diligence")

into various matters. Therefore, Buyer's obligation to complete the purchase of the Properties 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 Contract Date and continuing until the end of the Due Diligence Period (as defined below) to enter upon the Properties or to cause agents to enter upon the Properties for purposes of examination; provided, that Buyer may not take any action upon the Properties which reduces the value thereof; further provided, that Buyer shall promptly restore the Properties 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.

C. Due Diligence Period. Buyer shall have a period of thirty (30) days following the Contract Date to complete its examination of the Properties 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 Properties, Buyer may terminate this Agreement by written notice to Seller and with no liability to Buyer, except as set forth herein.

4. PRESERVATION OF TITLE AND CONDITION

A. After the date Seller receives a copy of this Agreement as described in Section 1, Seller shall not take any action or allow any action to be taken by others to cause the Properties to become subject to any new interests, liens, restrictions, easements, covenants, reservations or other matters affecting Seller's title (such matters are referred to as "Encumbrances").

B. Seller hereby covenant that Seller will not alter the condition of the Properties at any time after the date Seller receives a copy of this Agreement as described in Section 1. Further, Seller will not release any hazardous substances on or near the Properties and will not otherwise collect or store hazardous substances or other materials, goods, refuse or debris at the Properties.

5. TITLE COMMITMENT AND SURVEY

Seller acknowledges that Buyer has obtained, at Buyer's sole expense, a commitment for an owner's policy of title insurance (the "Title Commitment"), which shall be updated to identify any encumbrances affecting the Properties as of the Contract Date. Buyer, at its

option, may obtain a survey of the Properties, at its sole expense. The Properties shall be conveyed to Buyer free of all encumbrances, including but not limited to mortgages, judgments, and taxes, unless otherwise waived in writing by Buyer. The Title Commitment will be issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company"). The Title Commitment shall:

(1) Agree to insure good, marketable and indefeasible fee simple title to the Properties 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 only to any encumbrances waived by Buyer.

Regardless of whether this transaction closes, Buyer shall be responsible for the title search charges, the cost of the Title Commitment and owner's policy.

6. SELLER REPRESENTATIONS AND WARRANTIES

The undersigned Seller represents and warrants to Buyer that Seller owns fee simple title to the Properties and is fully empowered to sell the Properties to Buyer under the terms and conditions stated in this Agreement. Additionally, Seller represents and warrants that it has disclosed to Buyer any notifications from any local, state, or federal authority regarding environmental matters pertaining to the Properties.

7. 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 the 31st of March, 2019.

B. Closing Procedure.

(1) At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller's delivery of a warranty deed, substantially in the form attached hereto as **Exhibit B**, conveying the Properties to the Buyer, free and clear of all liens, encumbrances, judgments, title defects and exceptions, except those expressly waived by Buyer, and the Title Company's delivery of the Title Commitment to Buyer in accordance with Section 5 above.

(2) The possession of the Properties shall be delivered to the Buyer at Closing, in substantially 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 a condition precedent to Closing:

(1) Buyer shall have no obligation to complete the transaction contemplated in this Agreement unless Seller removes from the Properties before the Closing Date all personal property, including furniture and all personal belongings, and any trash or refuse.

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

E. Personal Property. Any personal property remaining at the Properties after Closing will be deemed to be abandoned by the Seller, and Buyer, in its sole discretion, may choose to exercise possession of and control over any such personal property.

F. Seller's Due Diligence. Seller acknowledges that Seller has conducted its own due diligence and acknowledges that the Purchase Price is fair and reasonable and waives any right that Seller may have to an appraisal or to contest or challenge the validity of compensation received under this Agreement.

8. ACCEPTANCE OF PROPERTIES "AS-IS"

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

9. TAXES

Seller will pay all real property taxes accrued as of the Closing Date. The Parties agree that the tax proration at Closing shall be based on the Properties' 2017 assessment value for all applicable tax years. Buyer will have no liability for any amount of real property taxes on the Properties as of the Closing Date.

10. COMMISSIONS

The Parties acknowledge that neither Buyer nor Seller are represented by any broker in connection with the transaction contemplated in this Agreement. 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.

11. APPLICABLE LAW; JURISDICTION

This Agreement shall be interpreted and enforced according to the laws of the State of Indiana. 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.

12. 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, or to Buyer in care of Buyer'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) at the respective addresses stated in Section 1 above. Either Party may, by written notice, modify the address for future notices to such Party.

13. 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.

14. COUNTERPARTS; SIGNATURES

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.

15. AUTHORITY TO EXECUTE

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

16. ACKNOWLEDGMENT OF UNDERSTANDING

The Parties negotiated this Agreement at arms' length, and each Party has had an opportunity to consult with legal counsel. Each Party hereby acknowledges and affirms that it understands and is willing to be bound by the terms of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the _____ day of _____ 2019.

BUYER:

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

SELLER:

By:


Richard Wayne Knight

EXHIBIT A

Description of Properties

Parcel I: Lot Numbered 26 in James D. Kent's Subdivision of Bank Out Lot Numbered 114, and one (1) acre off of the South side of Bank Out Lot Numbered 113 of the Third Plat of Out Lots of the Town, now City of South Bend, as per plat thereof recorded July 1, 1873 in Plat Book 3, page 27 in the Office of the Recorder of Saint Joseph County, Indiana, together with the South Half of the vacated alley lying North of and adjoining said Lot 26, EXCEPTING THEREFROM a lot or parcel of land 9.25 feet in width, North and South, taken off of and from the entire length of the South side thereof.

Commonly known as: 528 North Scott Street, South Bend, Indiana 46616
State ID No. 71-08-02-476-022.000-026
Parcel Key No. 018-1055-2336

Parcel II: Lot Numbered 6 in James D. Kent's Subdivision of Bank Out Lot Numbered 114, and one (1) acre off of the South side of Bank Out Lot Numbered 113 of the Third Plat of Out Lots of the Town, now City of South Bend, as per plat thereof recorded July 1, 1873 in Plat Book 3, page 27 in the Office of the Recorder of Saint Joseph County, Indiana.

Commonly known as: 602 North Scott Street, South Bend, Indiana 46616
State ID No. 71-08-02-476-015.000-026
Parcel Key No. 018-1054-2320

Parcel III: Lots Numbered 10 and 11 in Kent and Garrison's Subdivision of Out Lot Numbered 1 of Hendrick's and Grant's Addition to the Town, now City of South Bend, Indiana, as per plat thereof recorded August 13, 1881 in Plat Book 4, page 16 in the Office of the Recorder of Saint Joseph County, Indiana, EXCEPTING THEREFROM 6 feet off the Westerly side of said Lot 11.

Commonly known as: 611 Marion Street, South Bend, Indiana 46616
State ID Nos. 71-08-02-476-048.000-026 and 71-08-02-476-046.000-026
Parcel Key No. 018-1055-2342

Parcel IV: A tract of land 24 feet in width, North and South, taken off of and from the entire length of the North side of Lot Numbered 11 in William Miller's Subdivision of a part of Bank Out Lot Numbered 113 of the Third Plat of Out Lots of the Town, now City of South Bend, as per plat thereof recorded February 27, 1875 in Plat Book 3, page 42 in the Office of the Recorder of Saint Joseph County, Indiana.

Commonly known as: 620 North Scott Street, South Bend, Indiana 46616
State ID No. 71-08-02-476-008.000-026
Parcel Key No. 018-1056-2397

EXHIBIT B

Form of Warranty Deed

AUDITOR'S RECORD

TRANSFER NO. _____

TAXING UNIT _____

DATE _____

KEY NOS. 018-1055-2336

018-1054-2320

018-1055-2342

018-1056-2397

WARRANTY DEED

THIS INDENTURE WITNESSETH, that Richard Wayne Knight (the "Grantor")

CONVEYS AND WARRANTS to the Department of Redevelopment of the City of South Bend, for the use and benefit of the 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 "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 "Properties"):

Parcel I: Lot Numbered 26 in James D. Kent's Subdivision of Bank Out Lot Numbered 114, and one (1) acre off of the South side of Bank Out Lot Numbered 113 of the Third Plat of Out Lots of the Town, now City of South Bend, as per plat thereof recorded July 1, 1873 in Plat Book 3, page 27 in the Office of the Recorder of Saint Joseph County, Indiana, together with the South Half of the vacated alley lying North of and adjoining said Lot 26, EXCEPTING THEREFROM a lot or parcel of land 9.25 feet in width, North and South, taken off of and from the entire length of the South side thereof.

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Commonly known as: 620 North Scott Street, South Bend, Indiana 46616

State ID No. 71-08-02-476-008.000-026
Parcel Key No. 018-1056-2397

The Grantor hereby conveys the Properties in fee simple to the Grantee free and clear of all leases, licenses, mortgages, or other encumbrances of any kind or character but subject to all easements, highways, and other matters of record.

Signature Page Follows

GRANTOR:

Richard Wayne Knight

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Richard Wayne Knight, the Grantor, and acknowledged the execution of the foregoing Warranty Deed as his true act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 2019.

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. Sandra L. Kennedy.

This instrument was prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.