

#1595

Contract for sale of land for private redevelopment A part of lot 23 in Denniston and Fellows addition to the town, now City, of South Bend; beginning at a point 45 feet 3 inches west from the corner formed by the intersection of the South line of South Street with the west line of Columbia Street.

*Tom Eddington*

9306128

CONTRACT FOR SALE OF LAND  
FOR PRIVATE REDEVELOPMENT

*Held.  
Revelop*

FEB 25 9 25 AM '93

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THIS AGREEMENT, made on FEBRUARY 15, 1993, between the City of South Bend, Indiana, acting by and through its Board of Public Works (City), having its office at 1308 County-City Building, South Bend, Indiana, and Southhold Restorations, Inc., a not-for-profit corporation organized under the laws of the State of Indiana (Developer), having its principal place of business at 322 W. Washington, South Bend, Indiana 46601.

WHEREAS:

1. The City has offered to sell and the Developer is willing to buy the property described in Schedule A (Property) which is made a part of this agreement and to redevelop the Property according to this agreement (Agreement).

3. The City believes that redeveloping the Property according to the Agreement is in the best interest of the health, safety and welfare of the City and its residents.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this Agreement, the parties agree as follows:

SECTION I. SALE, PURCHASE PRICE.

Subject to all of the terms of this Agreement, the City agrees to sell and the Developer agrees to purchase the Property for Ten Dollars (\$10.00), (Purchase Price), to be paid in cash or by certified check when the deed conveying the property to the Developer is delivered.

SECTION II. CONVEYANCE OF PROPERTY.

A. Form of Deed. Subject to the terms of this Agreement, the City shall convey to the Developer title to the Property by quit claim deed (Deed). In addition to the other conditions, covenants and restrictions in this Agreement, such conveyance and title shall be subject to:

1. Building and use restrictions in this Agreement.
2. Applicable building codes and zoning ordinances.
3. Any and all other covenants, restrictions, easements and reservations of record.

B. Time and Place of Closing on Sale of the Property.

Subject to the terms and conditions of this Agreement, the City shall deliver the Deed and possession of the Property to the Developer on February 19, 1993 or earlier if the parties mutually agree in writing. Conveyance shall be made at the principal office of the City. The Developer shall accept the conveyance and pay the Purchase Price to the City at that time and place.

Prior to closing and as a condition precedent thereto, Developer must provide to the City evidence satisfactory to the City of the following binding commitment by a financial institution for financing of the Project.

C. Apportionment of Current Taxes. The City shall bear the portion of the current taxes (if any) on the Property which are a lien on the date of delivery of the Deed to the Developer and are allocable to the buildings or other property by the City. The portion of such current taxes allocable to the land shall be apportioned between the City and the Developer as of the date of

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delivery of the Deed.

If the amount of current taxes on the Property cannot be determined on the closing date, the apportionment between the City and the Developer shall be based on the amount of the most recently ascertainable taxes on the Property. Such apportionment shall be subject to the final adjustment within thirty (30) days after the date on which the actual amount of the current taxes is determined.

D. Recordation of Deed. The City shall promptly record the Deed in the St. Joseph County Recorder's Office and shall pay the costs for recording the Deed.

E. Legal Status of Developer. Prior to the date of closing, the Developer shall submit to the Commission evidence of its legal status as a not-for-profit corporation.

### SECTION III. NATURE OF IMPROVEMENTS; TIME FOR COMMENCEMENT AND COMPLETION.

A. Nature of Improvements. The Construction of improvements on the Property (Project) shall be substantially of the same size, scope and nature as that specified in the advertisement for bids and as proposed by the Developer in its bid to the City for disposition of the property. In awarding the bid to the Developer, the City relied upon all representations, descriptions, discussions, drawings and other representations by the Developer of the Project. Those matters are incorporated into this Agreement by reference together with the bid packet of the Developer as well as the narrative description of the Project submitted with the bid, attached to this Agreement as Schedule B.

B. Time for Construction. Construction of the Project on the Property shall begin by March 1, 1993 and shall qualify for the award of a certificate of occupancy from the Building Commissioner of the City of South Bend, Indiana, by March 4, 1994. The Developer shall certify in writing to the City and the City shall determine its approval of the date of beginning construction, which shall include not only ground breaking but also the assembly of personnel, machinery, equipment and supplies in the Property on a full time basis.

### SECTION IV. COMPLETION.

A. Certificate of Completion. Promptly after the Developer completes the Project under this Agreement and in substantial accordance with the plans and specifications approved by the City, the City shall furnish the Developer with a Certificate of Completion. This Certificate shall be a conclusive determination of satisfaction and termination of all covenants, requirements, obligations and the like in the Agreement and Deed, except the covenants of Section V of the Agreement and Section III of the Deed. After the issuance of the Certificate of Completion by the City, neither the City nor any other party shall thereafter have or be entitled to exercise any rights, remedies, or controls otherwise available with respect to the Property as a result of a default in or breach of any provisions of the Agreement or the Deed by the Developer or any successor in interest or assign, unless:

- a. the Developer, any lessee, or any other successor in interest or assign defaults or breaches the covenants of Section V of the Agreement or Section III of the Deed, and
- b. the right, remedy or control relates to such default or breach.

B. Form of Certification. Each Certification provided for in this Section shall be in such form as to be recordable in the St. Joseph County Recorder's Office.

C. Refusal or Failure to Provide Certification. If the City refuses or fails to provide Certification within thirty (30) days

after the Developer's written request, the City shall provide the Developer with a written statement indicating how the Developer failed to comply with the provisions of this Agreement and giving the measures necessary, in the City's opinion, for the Developer to take in order to obtain such certification.

#### SECTION V. RESTRICTIONS UPON USE OF PROPERTY.

A. Agreements of Developer. The Developer agrees and the Deed shall state that the Developer and its successors and assigns shall not discriminate on the basis of race, color, creed, sex or national origin in the sale, lease, rental, use or occupancy of the Property.

B. Enforceability of Covenants. The parties agree and the Deed shall expressly state that the covenants in this Section shall be covenants running with the land and, except only as otherwise specifically provided in the Agreement, shall be binding for the benefit of and shall be enforceable by:

1. the City of South Bend;
2. any successors in interest to the Property; and
6. the United States of America

The covenants shall be enforceable against:

1. the Developer;
2. its successors and assigns;
3. every successor in interest to the Property; and
4. any party in possession or occupancy of the Property.

The parties further agree that the covenants shall remain in effect without limitation as to time but shall bind the Developer, each successor in interest to the Property, and each party in possession only for the time that the party or successor shall have title to, an interest in, or possession of the Property.

C. Beneficiaries of Covenants. The parties also agree that the City and its successors and assigns and the United States shall be deemed beneficiaries of the covenants in this Section both for and in their own right and also for the purpose of protecting the interest of the City and other parties, public or private, in whose favor or for whose benefit the covenants have been made.

The Deed shall state that the covenants shall run in favor of the City and the United States for the entire period the covenants shall be in force and effect, regardless of whether the City or the United States has at any time been, or is the owner of any land or interest in any land in favor of which such covenants relate.

If the above covenants are breached, the City and the United States shall have all of the rights and remedies to which they or any other beneficiary of the covenant may be entitled.

#### SECTION VI. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

A. Representations as to Development. The Developer represents and agrees that its purchase of the Property and its other undertakings under this Agreement are and will be used for development of the Property and not for speculation in land holding. The Developer further recognizes that:

1. in view of the importance of the development of the Property to the general welfare of the City,
2. the substantial financial and other public assistance that has been made available by law and by the federal and local governments for the purpose of making such development possible, and
3. the fact that a transfer in ownership of the Developer is for practical purposes a transfer or disposition of the Property then owned by the Developer;

the qualifications and identity of the Developer and its stockholders or partners are of particular concern to the City. The Developer further recognizes that it is due to such qualifications and identity that the City is entering into this Agreement with the Developer, and in so doing is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants.

B. Prohibition Against Transfer of Interest. The Developer agrees for itself, its stockholders, and any successor in interest of itself and its stockholders that prior to the City's issuing a Certificate of Completion or prior written approval, the Developer or any party owning ten percent (10%) or more stock or interest in the Developer shall not transfer or distribute any stock or change the identity of the parties in control of the Developer whether by increased capitalization, merger with another corporation, change in partnership, corporate or other amendments, issuance of additional or new stock or classification of stock or partnership, or otherwise without first having obtained prior written approval from the City, which approval shall not be unreasonably withheld. The Developer and the parties signing the Agreement on behalf of the Developer represent that they have the authority of all of its existing stockholders or partners to agree to this provision on their behalf and to bind them with respect to it.

C. Prohibition Against Transfer of Property or Assignment of Agreement. The Developer represents and agrees for itself, its successors and assigns, that except for security for obtaining financing needed to enable the Developer to make the improvements under this Agreement; and except for any other purpose authorized by this Agreement, the Developer has not made or will not make prior to receiving the Certificate of Completion:

- (a) any total or partial sale, assignment, conveyance, or lease;
- (b) any trust or power; or
- (c) any transfer in any other mode or form, with respect to the Agreement or the Property or any part thereof, any interest therein; or
- (d) any contract or agreement to do any of the above without prior written approval of the City, which approval shall not be unreasonably withheld.

This subsection does not prohibit the lease after certification of a part of the property as provided by Section IV.

D. Approval of Qualifications Prior to Transfer. The City may require as conditions precedent to any approval of transfer or assignment any and all information regarding the qualifications, financial responsibility, legal status, experience, background, and any and all other information it deems necessary or desirable in order to achieve and safeguard the purposes of this Agreement.

E. No Transfer of Developer's Obligations. Absent specific written agreement by the City to the contrary, no transfer or approval by the City thereof shall relieve the Developer or any other party bound in any way by the Agreement or otherwise with respect to the construction of the improvements and completion of the Project from any of its obligations with respect thereto.

F. Information as to Interest. The Developer agrees that during the period between execution of this Agreement and the City's issuance of the Certificate of Completion, the Developer will promptly notify the City of any and all changes in the ownership of stock or partnership interest or any other act or transaction involving or resulting in any change in the ownership of such interest in the Developer or the relative distribution thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

SECTION VII. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES.

A. Limitation upon Encumbrance of Property. Prior to the City's issuing a Certificate of Completion, the Developer shall not:

1. engage in any transaction creating any encumbrance upon the Property, whether by express agreement or operation of law; or
2. allow any encumbrance to be made on the Property, except for obtaining funds needed to make the improvements constituting the Project.

Before securing any financing by mortgage or similar lien instrument with regard to any part of the Property, the Developer shall notify the City. The Developer shall promptly notify the City of any encumbrance that has been attached to the Property, whether by the Developer's voluntary act or otherwise. For any mortgage financing made under this Agreement, the Property may, at the Developer's option, be divided into several parts if such subdivision:

1. in the City's opinion is not inconsistent with the purpose of this Agreement; and
2. is approved in advance in writing by the City.

Any subdivision under this section must also be approved by any other local government agencies whose action is required for such subdivision under local or state law.

B. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement any mortgage holder authorized by the Agreement shall not be obligated by this Agreement to construct or complete the Project or to guarantee such construction or completion. No covenants or provisions in the Deed shall be construed so to obligate such holder. Nothing in this Agreement shall be construed to permit or authorize any such holder to use the Property in any manner not provided for or permitted in this Agreement or to construct any improvements other than those provided for or permitted in this Agreement.

C. Copy of Notice of Default to Mortgagee. Whenever the City delivers a notice or demand to the Developer with respect to any breach or default under this Agreement the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by the Agreement at the last address of such holder as shown in the records of the City.

D. Mortgagee's Option to Cure Defaults. After any breach or default referred to in subsection C, above, each such holder shall have the right at its option:

1. to cure or remedy such breach or default to the extent that it relates to the part of the Property covered by its mortgage; and
2. to add the cost of doing so to the mortgage debt and the lien of its mortgage.

Such holder shall not undertake or continue the construction beyond the extent necessary to conserve or protect those improvements or construction already made without first having expressly assumed the obligation to complete the construction on the property.

This assumption shall be made by written agreement pursuant to terms and conditions satisfactory to the City. Any holder who properly completes the Project shall be entitled to request a Certificate of Completion under the same terms and conditions provided for the Developer under Section IV.

E. City's Option to Pay Mortgage Debt or Purchase Property. In any case, where after default or breach by the Developer or any

successor in interest under the Agreement, any mortgage holder of any part of the Property:

1. has, but does not exercise, the option to complete the improvements relating to the part of the Property covered by its mortgage or for which it has obtained title, and such failure continues for a period of sixty (60) days after the holder has been notified or informed of the default or breach; or
2. begins construction but does not complete such construction within the period as agreed upon by the City and such holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in the Agreement), and such default shall not have been cured within sixty (60) days after written demand by the City so to do,

the City shall have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured under it, and every mortgage instrument made prior to the City's issuance of a Certificate of Completion of construction with respect to the Property by the Developer or successor in interest shall so provide. In the event ownership of any part of the Property has vested in such holder by way of foreclosure or action in lieu of foreclosure, the City shall be entitled, at its option, to a conveyance of any part of the Property (as the case may be) upon delivering to such holder an amount equal to the sum of:

- i. the mortgage debt at the time of foreclosure or action in lieu of foreclosure, less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings;
- ii. all expense with respect to the foreclosure;
- iii. the net expense, if any, exclusive of general overhead, incurred by such holder in and as a direct result of the subsequent management of the Property;
- iv. the costs of any improvements made by such holder; and
- v. an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

F. City's Option to Cure Mortgage Default. Prior to the City's issuance of a Certificate of Completion, if the Developer or any successor in interest defaults or breaches any of its obligations under any mortgage or other instrument creating an encumbrance or lien upon any part of the Property, the City at its option may cure such default or breach. If this occurs, the Developer or successor in interest shall reimburse the City for all costs incurred by the City in curing such default or breach. Such reimbursement shall be in addition to and without limitation upon any other rights or remedies to which the City is entitled. Any such lien shall be subject always to the lien (including any lien contemplated, because of advances yet to be made) of any then existing mortgages on the Property authorized by the Agreement, including any lien contemplated, because of advances yet to be made.

G. Mortgage and Holder. For the purposes of this Agreement: the term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon any part of the Property as security for a loan to construct and otherwise finance the Project; the term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust, including, but not limited to, the Federal Housing Commissioner, the Administrator of Veterans Affairs, and any successor in office of either such official.



SECTION VIII. REMEDIES.

A. In General. Except as otherwise provided in the Agreement, upon any default in or breach of the Agreement by either party or any successor to such party, such party (or successor), upon written notice from the other, shall proceed immediately to cure or remedy such default or breach within thirty (30) days after receiving the notice. If action is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the aggrieved party may institute proceedings necessary or desirable in its opinion to cure and remedy the default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

B. Termination by Developer Prior to Conveyance.

1. If the City does not tender conveyance or possession of the Property in the manner and condition and by the date provided in the Agreement, and any such failure is not cured within thirty (30) days after the date of written demand by the Developer, the Agreement shall be terminated at the option of the Developer, by written notice to the City, and, except for return of the Deposit, neither the City nor the Developer shall have any further rights against or liability to the other under the Agreement.

2. If the Developer furnishes evidence satisfactory to the City that, after and despite diligent effort for a period of sixty (60) days after the date of this Agreement, it has been unable to obtain mortgage financing for the Project on a basis and on terms that would generally be considered satisfactory by builders or contractors for construction of the nature and type of the Project, the Developer shall, after having submitted such evidence and if so requested by the City, continue to make diligent efforts to obtain such financing for a period of sixty (60) days after such request; if the Developer fails to obtain financing after efforts listed above, then the Agreement shall, at the option of the City or the Developer, be terminated by written notice thereof to the other party, and neither the City nor the Developer shall have any further rights against or liability to the other under the Agreement.

C. Termination by City Prior to Conveyance.

In the event that:

- a. prior to conveyance of the Property to the Developer and in violation of the Agreement:
  - i. the Developer (or successor in interest) assigns or attempts to assign the Agreement or any rights therein or the Property, or
  - ii. there is any change in the ownership or distribution of the stock of the Developer or with respect to the identity of the parties in control of the Developer or the degree thereof; or
- b. the Developer does not submit satisfactory architectural and site plans, or evidence of necessary equity capital and mortgage financing, in satisfactory form and in the manner and by the dates respectively provided in the Agreement therefor; or
- c. the Developer does not pay the Purchase Price and take title to the Property upon tender of conveyance by the City pursuant to the Agreement,

and if any default or failure referred to in subdivisions (a), (b), or (c) of this Section shall not be cured within thirty (30) days after the date of written demand by the City, then the Agreement and any rights of the Developer or any successor in interest in or from the Agreement and the Property shall, at the option of the City, be terminated. The Deposit shall be retained by the City as liquidated.

damages and as its property without any deduction, offset, or recoupment whatsoever. Neither the Developer (or successor in interest) nor the City shall have any further rights against or liability to the other under the Agreement.

D. Revesting Title in City upon Happening of Event Subsequent to Conveyance to Developer. If subsequent to conveying any part of the Property to the Developer and prior to completion of the Project as certified by the City:

1. the Developer (or successor in interest) shall default in or violate its obligations with respect to the construction of the Project, including the nature and the dates for the beginning and completion thereof, or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months (six (6) months, if the default is with respect to the date of completion of the construction) after written demand by the City so to do; or
2. the Developer (or successor in interest) shall fail to pay real estate taxes or assessments on the Property when due, or shall place thereon any encumbrance or lien unauthorized by the Agreement, or shall cause any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments are not paid, or the encumbrance or lien removed or discharged or provision reasonably satisfactory to the City made for such payment, removal, or discharge, within ninety (90) days after written demand by the City so to do; or
3. there is, in violation of the Agreement, any transfer of any part of the Property, or any change in the ownership or distribution of the stock of the Developer, or with respect to the identity of the parties in control of the Developer or the degree thereof as provided in Section VI, and such violation shall not be cured within sixty (60) days after written demand by the City to the Developer,

then the City shall have the right to re-enter and take possession of the Property and to terminate and revest in the City the estate conveyed by the Deed to the Developer. The intent of this provision, together with other provisions of the Agreement, is that the conveyance of the Property to the Developer shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that the event of any default, failure, violation, or other action or inaction by the Developer specified in this paragraph D the Developer's failure to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subdivisions, the City at its option may declare a termination in favor of the City of the title, and of all the rights and interest in and to the Property conveyed by the Deed to the Developer, and that such title and all rights and interests of the Developer, and any assigns or successors in interest to and in the Property, shall revert to the City; provided, that such condition subsequent and any revesting of title as a result thereof in the City:

1. shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by the Agreement, and (ii) any rights or interests provided in the Agreement for the protection of the holders of such mortgages; and
2. shall not apply to individual parts of the Property, if any, (or in the case of parts leased, the leasehold interest) on which the construction thereon has been completed under the Agreement and for which a Certificate of Completion has been issued as provided in Section IV.

E. Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in the City of title to the Property or any part thereof as provided in paragraph D above, the City shall, pursuant to its responsibilities under State law, use its best efforts to resell the Property or part thereof (subject to such mortgage liens and leasehold interests as set forth in paragraph D above) as soon and in such manner as the City shall find feasible and consistent with the objectives of State law to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the construction of the Project in its stead or of another project as shall be satisfactory to the City and in accordance with the uses specified for such Property or part thereof in the Plan. Upon such resale of the Property, the proceeds shall be applied:

1. First, to reimburse the City for all costs and expenses incurred by the City, including but not limited to:
  - a. salaries of personnel, in connection with the recapture, management, and resale of the Property or part thereof, but less any income derived by the City from the Property or part thereof in connection with recapture such management or resale;
  - b. all taxes, assessments, and water and sewer charges with respect to the Property or part thereof, or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the City, an amount, if paid, equal to such taxes, assessments, or charges, as determined by the appropriate assessing officials, as would have been payable if the Property were not so exempt;
  - c. any payments made or needed to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees;
  - d. any expenditures made or obligations incurred in making or completing the construction or any part thereof on the Property or part thereof;
  - e. and any amounts otherwise owing the City by the Developer and its successor or transferee; and
2. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to:
  - a. the sum of the Purchase Price paid by it for the Property (or allocable to the part thereof) and the cash actually invested by the Developer in construction on the Property or part thereof, less
  - b. any gains or income withdrawn or made by the Developer from the Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by the City as its property.

F. Other Rights and Remedies of City; No Waiver by Delay. The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section VIII. This would include the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title, and interest of the Developer, and (except for such individual parts upon which construction has been completed under the Agreement and for which a Certificate of Completion as provided in Section IV is to be delivered, and subject to such mortgage liens and leasehold

interests as provided in Section VIII, paragraph D hereof) its successors in interest and assigns, in the Property, and the reversioning of title in the City. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section VIII shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way. This provision intends that the City should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this paragraph because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved; nor shall any waiver in fact made by the City with respect to any specific default by the Developer under this paragraph be considered or treated as a waiver of the City's rights to any other defaults by the Developer under this paragraph or with respect to the particular default except to the extent specifically waived in writing.

G. Enforced Delay in Performance for Causes Beyond Control of Party. For the purposes of any of the provisions of the Agreement, neither the City nor the Developer, as the case may be, nor any successors in interest, shall be considered in breach of or in default in its obligations with respect to the preparation of the Property for the Project, or the beginning and completion of construction, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence. These include, but are not limited to, acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors due to such causes. The purpose and intent of this provision is that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City with respect to the preparation of the Property for development or of the Developer with respect to construction of the Project as the case may be, shall be extended for the period of the enforced delays as determined by the City: Provided, That the party seeking the benefit of the provisions of this paragraph shall, within ten (10) days after the beginning of the enforced delay, have first notified the other party thereof in writing and of the cause or causes thereof, and shall have requested an extension for the period of the enforced delay.

H. Rights and Remedies Cumulative. The rights and remedies of the parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative. The exercise by either party of any one or more of such remedies shall not preclude the exercise, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, manner or time thereof, any obligation of the other party, or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to that particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver of any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

I. Party in Position of Surety With Respect to Obligations. The Developer, for itself, its successors and assigns, and for all other persons who are or who shall become liable upon or subject to any obligation or burden under the Agreement, whether by express or implied assumption or otherwise, hereby waives, to the fullest extent permitted by law, any and all claims or defenses otherwise available on the ground of its or their being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

SECTION IX. MISCELLANEOUS.

A. Conflict of Interest; City Representatives Not Individually Liable. No official or employee of the City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested. No official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or assign or on any obligations under the terms of the Agreement.

B. Brokered Services. The parties agree and acknowledge that no brokered services were used or resulted in the execution of this agreement.

C. Recordation. This Agreement shall be recorded in the office of the St. Joseph County Recorder immediately subsequent to its execution.

D. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

1. The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Developer will send to each labor union or representative of workers with whom the Developer has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Developer's commitments under Executive Order 11246, and any amendments thereto and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Developer will comply with all provisions of Executive Order 11246, and any amendments thereto and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Developer will furnish all information and reports required by Executive Order 11246, and any amendments thereto, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Developer's books, records, and accounts by the Commission, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. If the Developer does not comply with the nondiscrimination

clauses of this Section, or with regulations, or orders, the Agreement may be cancelled, terminated, or suspended in whole or in part and the Developer may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, and any amendments thereto, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, and any amendments thereto or by rule, regulation, or other of the Secretary of Labor, or as otherwise provided by law.

7. The Developer will include the provisions of Paragraph (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. The Developer will take such action with respect to any construction contract, subcontract, or purchase order as the Commission or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Developer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission or the Department of Housing and Urban Development, the Developer may request the United States to enter into such litigation to protect the interests of the United States. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Paragraph shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:", and the term "Developer" shall be changed to "Contractor."

E. Provisions Not Merged With Deed. None of the provisions of the Agreement are intended to or shall be merged by reason of any Deed transferring title to the Property from the City to the Developer or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of the Agreement.

F. Titles of Articles and Sections. Any titles of the several parts, sections, and paragraphs of the Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

G. Notices and Demands. A notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- i. in the case of the Developer, is addressed to or delivered personally to the Developer as follows:

Southhold Restorations, Inc.  
322 West Washington  
South Bend, Indiana 46601  
ATTN: Jeffrey Wiener, Treasurer; and

- ii. in the case of the City is addressed to or delivered personally to the City of South Bend, Board of Public Works at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601,

or at such other address with respect to either such party as that party may from time to time designate in writing and forward to the other as provided in this Section.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement on the date first written above.

CITY OF SOUTH BEND  
BOARD OF PUBLIC WORKS

John E. Leszczynski  
John E. Leszczynski  
James R. Caldwell  
James R. Caldwell  
Mary Hall Mueller  
Mary Hall Mueller

ATTEST:

Sandra M. Parmerlee  
Sandra M. Parmerlee, Clerk

SOUTHOLD RESTORATIONS, INC.

By: Jerry Wiener  
Jerry Wiener  
Its: Treasurer

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

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared John E. Leszczynski, James R. Caldwell, and Mary Hall Mueller, members of the City of South Bend Board of Public Works, and acknowledged the execution of the foregoing Contract for Sale of Land for Private Development.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on FEBRUARY 15, 1993.

Sandra M. Parmerlee  
SANDRA M. PARMERLEE  
Notary Public  
Residing in St. Joseph County, IN

My Commission Expires:  
7-24-96

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

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jerry Wiener and acknowledged the execution of the foregoing Contract for Sale of Land for Private Development.

IN WITNESS WHEREOF, I have hereunto subscribed my name and  
affixed my official seal on February 12, \_\_\_\_\_, 1993.

Martha A. Lantz  
Martha A. Lantz  
Notary Public  
Residing in St. Joseph County, IN

My Commission Expires:

MARTHA A. LANTZ  
NOTARY PUBLIC STATE OF INDIANA  
ST JOSEPH COUNTY  
MY COMMISSION EXP OCT 28, 1994

This document prepared by Jenny Pitts Manier, Chief Assistant City  
Attorney, 1400 County-City Building, South Bend, Indiana 46601.

PERS/K-SO HOLD



A parcel of land in the southwest quarter of  
12, Township 37 North, Range 2 East, City of South  
Bend, Portage Township, St. Joseph County, Indiana,  
being platted as Denniston & Fellows Addition as  
recorded in Book 2, Page 48, at the St. Joseph  
County Recorder's office in South Bend, Indiana, and  
described as follows:

Beginning at an iron at the intersection of the East  
right-of-way line of Carroll Street and the South  
right-of-way line of South Street; thence South  
89°39'47" East (bearing assumed), 141.50 feet along  
said South right-of-way line to the Point of  
Beginning; thence continuing South 89°39'47" East,  
50.00 feet along said South right-of-way line;  
thence South 00°00'00" East, 115.50 feet to the  
North right-of-way line of a 14.00 foot alley;  
thence North 89°39'47" West, 50.00 feet along said  
North right-of-way line; thence North 00°00'00"  
West, 115.50 feet to the South right-of-way line of  
South Street and the Point of Beginning, and  
containing 0.1326 acres, more or less, and is  
subject to all easements, restrictions and or  
covenants of record, commonly known as 312 East  
South Street, South Bend ("Real Estate"); and

RESO2/DES-SHOLD

Developer shall move the residential structure located at 836 North Main Street, South Bend, to the Property, situate it on a new foundation to be constructed at the Property by Developer, and ready the structure for occupancy by March 4, 1994. The house may be subdivided into no more than two individual units.

The renovation must include the exterior facades - any artificial siding such as asphalt siding, or wide band aluminum siding, must be removed (the existing wood siding is to be repaired and painted), all windows are to be repaired/replaced as needed, a landscape plan must be implemented, etc. The house must be completely functional with all mechanical systems in place - it must be fully operational.

9306128

STANDARD RECORDS  
FILE NO. MARSHALL BEACH  
RECORDED

FEB 25 3 25 PM '93

ST. JOHNS CO.  
RECORD

INDEXED

367

MAIL DEED TO:

MAIL TAX BILLS TO:

COPYRIGHT  
ST. JOSEPH COUNTY, INDIANA  
BAR ASSOCIATION  
PROPERTY FORM 103 - 1974

SOUTHOLD RESTORATIONS, INC.  
322 W. Washington  
South Bend, Indiana 46601

9394893

AUDITOR'S RECORD

Transfer No. 13971

Taxing Unit SB

Date 2-12-93

Key No.: 18-3026-0938

QUIT-CLAIM DEED

CITY OF SOUTH BEND, INDIANA

the Grantor

Release and Quit-Claims to SOUTHOLD RESTORATIONS, INC., an Indiana  
not-for-profit corporation

the Grantee

for and in consideration of One Dollar (\$1.00) and other good and valuable consideration

the receipt of which is hereby acknowledged, Real Estate in St. Joseph County,  
in the State of Indiana, described as follows:

A part of Lot No. 23 in Denniston and Fellows Addition to the Town, now City, of South Bend, which part is bounded by a line running as follows: Beginning at a point 45 feet 3 inches west from the corner formed by the intersection of the South line of South Street with the West line of Columbia Street; thence South 7 rods to a public alley; thence West along the North line of said alley 45 feet; thence North 7 rods to the South line of South Street; thence East along the South line of South Street 45 feet to the place of beginning, commonly known and described as 316 East South Street, South Bend, Indiana.

REC-100  
FEB 17 3 05 PM '93

ST. JOSEPH COUNTY, INDIANA  
CLERK OF COURTS  
ST. JOSEPH, CO. INDIANA

Signed and dated on February 8, 19 93

State of Indiana, St. Joseph County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared:

Joseph E. Kernan, Mayor, and  
Irene Gannon, Clerk



and acknowledged the execution of the foregoing deed on

FEBRUARY 8, 19 93

Sandia M. Parmelee, Notary Public

SANDIA M. PARMELEE  
My commission expires: 7-24-96

Signature of Joseph E. Kernan

Joseph E. Kernan  
Typed or printed name

Signature of Irene Gannon

Irene Gannon  
Typed or printed name

Signature of John Hargan, Chief Deputy

Signature

Typed or printed name

Signature

Typed or printed name

Prepared by Jenny Pitts Manier, Chief Assistant City Attorney, 1400 County-City Building, South Bend, IN 46601

Key# 18-030260937

COPYRIGHT ST. JOSEPH COUNTY, INDIANA BAR ASSOCIATION PROPERTY FORM 103 - 1974

MAIL DEED TO: *Hold Redevelopment*  
Southhold Restorations, Inc.  
322 West Washington  
South Bend, IN 46601

MAIL TAX BILLS TO:  
  
**9305827**

| AUDITOR'S RECORD |                |
|------------------|----------------|
| Transfer No.     | <u>14188</u>   |
| Taxing Unit      | <u>DB</u>      |
| Date             | <u>2-24-93</u> |

# QUIT-CLAIM DEED

SOUTH BEND REDEVELOPMENT AUTHORITY  
*the Grantor*

**Release s and Quit-Claims to** CITY OF SOUTH BEND, INDIANA

*the Grantee*

for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration  
the receipt of which is hereby acknowledged, Real Estate in St. Joseph County,  
in the State of Indiana, described as follows:

A parcel of land in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, being platted as Denniston & Fellows Addition as recorded in Book 2, Page 48, at the St. Joseph County Recorder's office in South Bend, Indiana, and described as follows:

Beginning at an iron at the intersection of the East right-of-way line of Carroll Street and the South right-of-way line of South Street; thence South 89°39'47" East (bearing assumed), 141.50 feet along said South right-of-way line to the Point of Beginning; thence continuing South 89°39'47" East, 50.00 feet along said South right-of-way line; thence South 00°00'00" East, 115.50 feet to the North right-of-way line of a 14.00 foot alley; thence North 89°39'47" West, 50.00 feet along said North right-of-way line; thence North 00°00'00" West, 115.50 feet to the South right-of-way line of South Street and the Point of Beginning, and containing 0.1326 acres, more or less, and is subject to all easements, restrictions and or covenants of record, commonly known as 312 East South Street.

DULY ENTERED FOR TAXATION  
BEVERLY D. CRONE  
AUDITOR  
ST. JOSEPH CO. INDIANA  
1993

Signed and dated on February 15, 1993

State of Indiana, St. Joseph County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared:

Joseph Wroblewski, President, and Donald K. Fewell, Secretary, of the South Bend Redevelopment Authority

Joseph Wroblewski  
Signature  
Joseph Wroblewski  
Typed or printed name

Donald K. Fewell  
Signature  
Donald K. Fewell  
Typed or printed name

and acknowledged the execution of the foregoing deed on

February 18, 1993.

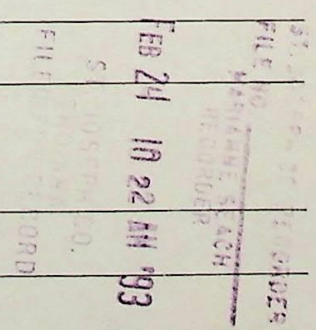
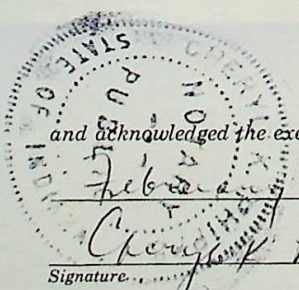
Cheryl K. Phipps, Notary Public  
Signature

CHERYL K. PHIPPS  
Typed or printed name

My commission expires January 9, 1995

Signature  
Typed or printed name  
Signature  
Typed or printed name

Prepared by Jenny Pitts Manier, Chief Assistant City Attorney, 1400 County-City Building, South Bend, IN 46601  
Attorney at Law



9305827

ST. JOSEPH CO. RECORDER  
FILE NO. \_\_\_\_\_  
MARIANNE SEACH  
RECORDER

FEB 24 10 22 AM '93

ST. JOSEPH CO.  
FILED BY RECORD

INDEXED



7m

9306130

MAIL DEED TO:  
SOUTH BEND DEPARTMENT  
OF REDEVELOPMENT  
1200 COUNTY-CITY BUILDING  
SOUTH BEND, IN 46601

AUDITOR'S RECORD ~~14239~~  
TRANSFER NO. 14239  
TAXING UNIT AB  
DATE 2-25-93

KEY NO.: 18-3026-0938

MAIL TAX BILL TO:  
SOUTHOLD RESTORATIONS, INC.  
322 W. Washington  
South Bend, Indiana 46601

QUIT CLAIM DEED  
(Private Redevelopment)

THIS INDENTURE WITNESSETH, that the City of South Bend, Indiana (Grantor), conveys and quit claims to Southhold Restorations, Inc., an Indiana not-for-profit corporation (Grantee), for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in the City of South Bend, St. Joseph County, Indiana (Real Estate):

See attached Exhibit A

SECTION I. This Deed is subject to the covenants, conditions, restrictions, and provisions of the Contract for Sale of Land for Private Redevelopment entered into between the Grantor and the Grantee dated February 15, 1993, a copy of which was recorded on Feb. 25, 1993, as Document No. 9306128, in the Office of the Recorder in St. Joseph County, Indiana (the Agreement).

The Grantee may not convey this Real Estate, or any part thereof, without the consent of the Grantor until the Certificate of Completion, as described in the Agreement, releasing the Grantee from the obligations of the Agreement as to this Real Estate, or such part thereof then to be conveyed, has been placed on record. This provision, however, in no way prevents the Grantee from mortgaging this Real Estate in order to obtain funds for the purchase of Real Estate hereby conveyed and for erecting improvements thereon in conformity with applicable provisions of the Zoning Ordinance of the City of South Bend, Indiana.

The terms and covenants of the Agreement pertaining to the redevelopment of the Real Estate and to the improvements shall be deemed covenants running with the land.

It is specifically agreed that the Grantee shall promptly begin and diligently prosecute to completion the redevelopment of the Real Estate through the construction of the improvements thereon, as provided in the Agreement, and as represented to the Grantor in public documents of the Grantor, including but not limited to the bid proposal submitted to the Grantor by Grantee (Project). Such construction shall be begun no later than March 1, 1993, and qualify for a certificate of occupancy from the Building Commissioner of the City of South Bend on or before March 4, 1994.

Promptly after completion of the Project, the Grantor will furnish the Grantee with an appropriate instrument so certified. Such certification by the Grantor shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction and termination of all covenants, requirements, obligations and the like in the Agreement and Schedule C. thereto, and in this deed, except the covenants of Section V of the Agreement and Section III herein. All certifications provided for herein shall be in such form as will enable them to be recorded with the Office of the Recorder of St. Joseph County.

SECTION II. In the event the Grantee herein, prior to the recording of the Certificate of Completion hereinabove referred to, shall --

- (a) default in or violate any obligations with respect to the construction of the improvements provided for in this Deed and the Agreement, or abandon or substantially suspend construction work, and any default, or violation, abandonment, or suspension is not cured, ended, or remedied within three (3) months (six (6) months if the default is with respect to the date for the completion of the improvements) after written demand by the Grantor so to do; or
- (b) fail to pay real estate taxes or assessments on the Real Estate or any part thereof when due, or shall place thereon any encumbrance or lien not authorized by the Agreement with the Grantor, or shall suffer any levy or attachment to be made, or any materialmen's or mechanic's liens or any other unauthorized encumbrances or lien to attach, and such taxes or assessments are not paid or the encumbrance or lien removed or discharged, or provisions satisfactory to the Grantor made for such payments, removal or discharge, within thirty (30) days after written demand by the Grantor so to do; or
- (c) in violation of the Agreement or of this Deed, transfer the Real Estate or any part thereof, or if there is any change in the ownership or partnership interests, or to the identity of the parties in control of the Grantee or either of them or the degree thereof, and such violation is not cured within thirty (30) days after written demand by the Grantor;

then the Grantor shall have the right to re-enter and take possession of the Real Estate and to terminate and re-vest in the Grantor the estate conveyed by this Deed to the Grantee, its assigns or successors in interest. Such reversion of title shall, however, be subject to the lien of any outstanding mortgage authorized by the Agreement.

SECTION III. The Grantee agrees for itself and its successors and assigns to or of the Real Estate any part thereof, hereinabove described, that the Grantee and such successors and assigns shall not discriminate upon the basis of race, sex, color, religion, or national origin in the sale, lease or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

It is intended and agreed that the above and foregoing agreements and covenants shall be covenants running with the land; and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Deed, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Grantor, its successors and assigns, and the City, and any successor in interest to the Real Estate, or any part thereof, and the United States against the Grantee, its successors and assigns, and every successor in interest to the Real Estate, or any part thereof. It is further intended and agreed that such agreements and covenants shall remain in effect without limitation as to time: Provided, however, that such agreements and covenants shall be binding on the Grantee itself, each successor in interest to the Real Estate, and every part thereof, and each party in possession or occupancy, respectively, only for the period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Real Estate or part thereof.



SECTION IV. In amplification, and not in restriction, of the provisions of this Deed, it is intended and agreed that the Grantor and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided herein, and the United States shall be deemed a beneficiary of the covenants in Section III hereof, both for and in their own right, and also for the purposes of protecting the interest of the community and the other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Grantor and the United States, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Grantor or the United States has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Grantor and the United States shall have the right in the event of any breach of any such agreement or covenant to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

SECTION V. This Deed is also given subject to:

- (a) Easements, Restrictions, and Agreements of record.
- (b) Provisions of the zoning ordinances of the City of South Bend, Indiana, insofar as they affect this real estate.

In the event any of the terms, conditions, obligations or restrictions herein conflict with those contained in the Agreement, the terms, conditions, obligations and restrictions of the Agreement, when read together as a whole, shall prevail.

SECTION IV. Grantor certifies under oath that no Indiana Gross Income Tax is due or payable in respect to the transfer made by this deed.

IN WITNESS WHEREOF, the Grantor has caused this Deed to be duly executed in its behalf by its President and Secretary and has caused its corporate seal to be hereunto affixed on February 22, 1993.

CITY OF SOUTH BEND, INDIANA  
GRANTOR

BY: Joseph E. Kernan  
Joseph E. Kernan, Mayor

ATTEST:

Irene K. Gammon  
Irene K. Gammon, Clerk

By: Maureen Palomares  
Deputy City Clerk





EXHIBIT A

A parcel of land in the Southwest Quarter of Section 12, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, being platted as Denniston & Fellows Addition as recorded in Book 2, Page 48, at the St. Joseph County Recorder's office in South Bend, Indiana, and described as follows:

Beginning at an iron at the intersection of the East right-of-way line of Carroll Street and the South right-of-way line of South Street; thence South  $89^{\circ}39'47''$  East (bearing assumed), 141.50 feet along said South right-of-way line to the Point of Beginning; thence continuing South  $89^{\circ}39'47''$  East, 50.00 feet along said South right-of-way line; thence South  $00^{\circ}00'00''$  East, 115.50 feet to the North right-of-way line of a 14.00 foot alley; thence North  $89^{\circ}39'47''$  West, 50.00 feet along said North right-of-way line; thence North  $00^{\circ}00'00''$  West, 115.50 feet to the South right-of-way line of South Street and the Point of Beginning, and containing 0.1326 acres, more or less, and is subject to all easements, restrictions and or covenants of record, commonly known as 312 East South Street, South Bend.

RESO2/DES-SHOLD

FILED  
MAR 25 3 07 PM '93