

**RESOLUTION NO. 3299**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
RELATED TO ACQUISITION OF PROPERTY IN THE  
RIVER WEST DEVELOPMENT AREA**

WHEREAS, under the authority granted by I.C. 36-7-14 (the "Act") and in furtherance of the development plan (the "Plan") for the River West Development Area (the "Area"), the South Bend Redevelopment Commission (the "Commission") has determined to acquire unencumbered fee simple interest in certain property located within the Area, situated within the City of South Bend, Indiana (the "City"), which property is more particularly described in attached Exhibit A (the "Property"); and

WHEREAS, on June 13, 2008, the Commission adopted Resolution No. 2455 amending the Plan and adding the Property to the acquisition list relating to the Area; and

WHEREAS, two (2) independent appraisals of the Property have been obtained in accordance with Section 19(b) of the Act, the average of which provides an offering price of Fifty Thousand Five Hundred Dollars (\$50,500.00) (the "Offering Price") pursuant to Section 19(b) of the Act; and

WHEREAS, the Commission's staff presented to the Property's owner (the "Owner") an offer to purchase the Property from the Owner for the Offering Price, plus expenses incidental to the conveyance and determination of the title of the Property (the "Offer"); and

WHEREAS, the Owner rejected the Offer and submitted a counter-offer to sell the Property to the Commission for the sum of Fifty One Thousand Dollars (\$51,000.00), plus expenses incidental to the conveyance and determination of the title of the Property (the "Counter-Offer," attached as Exhibit B); and

WHEREAS, the staff has reviewed the Counter-Offer and determined that the proposal is reasonable in light of the totality of circumstances concerning the Property and the Area; and

WHEREAS, the Commission desires to accept the Owner's Counter-Offer and thereby authorize acquisition of the Property for consideration greater than the Offering Price, as permitted pursuant to Section 19(b) of the Act.

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission that:

1. The Commission hereby finds that the Counter-Offer is reasonable and that accepting the Counter-Offer is in the best interest of the citizens of the City and the South Bend Redevelopment District and consistent with the purposes and requirements set forth in the Act.

2. The Commission hereby ratifies any actions of its staff, authorized representatives, or legal counsel taken prior to the date of this Resolution that are consistent with the acquisition procedure stated in Section 19 of the Act. Notwithstanding the foregoing, no agreement to purchase the Property from the Owner, whether made by a Commissioner, a staff member, or another City employee or official, is binding against the Commission until approved and accepted by the Commission in writing.


3. The Commission hereby approves the form of purchase agreement attached hereto as Exhibit C, which the Commission will execute simultaneously herewith. The Commission instructs the Commission's authorized representatives and attorneys to deliver a signed copy of the purchase agreement to the Owner and take all steps necessary to consummate the transaction contemplated therein.

ADOPTED at a Regular Meeting of the South Bend Redevelopment Commission held on August 13, 2015, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT, by  
and through its governing body, the South  
Bend Redevelopment Commission

  
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

  
\_\_\_\_\_  
Donald E. Inks, Secretary  
David A. Varner, Vice-President

4000.000007155176750.002

**EXHIBIT A**

**Description of Property**

Lot 25 Dunns Sub of Bol 93 [Tax Key Number 018-3059-2322]; commonly known as 1124  
W. Grace St., South Bend, Indiana.

**EXHIBIT B**

**Counter-Offer**

[See attached.]



**ATTACHMENT A**

**PROJECT AREA:** River West Development Area

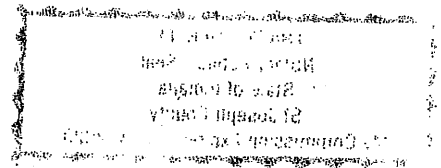
**PROPERTY ADDRESS:** 1124 W. Grace St

**TAX KEY NUMBER:** 018-3059-2322

**SELLER:** Ms. Sylvia Krol

**LEGAL DESCRIPTION**

Lot 25 Dunns Sub of Bol 93



**EXHIBIT C**

**Agreement To Buy And Sell Real Estate**

[See attached.]

## **AGREEMENT TO BUY AND SELL REAL ESTATE**

This Agreement To Buy And Sell Real Estate (“Agreement”) is made by and between Sylvia Krol, of 1124 Grace St., South Bend, Indiana 46619 (“Seller”) and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (“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 I.C. 36-7-14 (the “Act”).

B. In furtherance of its purposes under the Act, Buyer desires to purchase from Seller certain real property located in South Bend, Indiana (the “City”), and more particularly described in attached **Exhibit A** (the “Property”).

C. Pursuant to the Act, Buyer adopted its Resolution No. 3299 on August 13, 2015, approving the purchase of the Property in accordance with Section 19 of the Act (the “Acquisition Resolution”).

D. Seller desires to sell the Property to the Buyer in accordance with the Acquisition Resolution.

THEREFORE, in consideration of the mutual covenants and promises in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree as follows:

### **1. OFFER/PURCHASE AND SALE OBLIGATION**

A copy of this Agreement, signed by Buyer, constitutes Buyer’s offer to purchase the Property and shall be promptly delivered to Seller at 1124 Grace St., South Bend, Indiana 46619.

This offer shall expire ten (10) days after delivery to the Seller unless accepted by Seller. To accept Buyer’s offer, Seller shall return a copy of this Agreement, counter-signed by Seller to Brock Zeeb, Department of Community Investment, City of South Bend, 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601 (“Buyer’s Representative”).

By delivering a counter-signed copy of this Agreement to Buyer’s Representative, Seller agrees to sell the Property 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 Property shall be Fifty-One Thousand Dollars (\$51,000.00) (the "Purchase Price"), payable by Buyer to Seller in cash at the closing described in Section 10 (the "Closing," the date of which is the "Closing Date").

**3. BUYER'S DUE DILIGENCE**

A. Investigation. Seller acknowledges that Buyer's determination to purchase the Property requires a process of investigation (Buyer's "Due Diligence") into various matters. Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

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

C. Due Diligence Period. Buyer shall have a period of thirty (30) days following the Contract Date to complete its examination of the Property in accordance with this Section 3 (the "Due Diligence Period").

D. Termination of Agreement. If at any time within the Due Diligence Period, Buyer determines, in its sole discretion, not to proceed with the purchase of the Property, Buyer may terminate this Agreement by written notice to Seller.

**4. SELLER'S DOCUMENTS/SURVEY AND ENVIRONMENTAL REPORT**

Seller will provide Buyer, within seven (7) days after the Contract Date, with a copy of all environmental inspection, engineering, title and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller.

**5. 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 Property to become subject to any interests, liens, restrictions, easements, covenants, reservations or other matters affecting Seller's title (such matters are referred to as "Encumbrances").

B. Seller hereby covenants that Seller will not alter the condition of the Property 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 Property and will not otherwise collect or store hazardous substances or other materials, goods, refuse or debris at the Property.

**6. TITLE COMMITMENT AND SURVEY**

Seller acknowledges that Buyer intends to obtain, at Buyer's sole expense, and to rely upon a commitment for an owner's policy of title insurance (the "Title Commitment") and a survey of the Property (the "Survey") identifying all Encumbrances as of the Contract Date. The Property shall be conveyed to Buyer free of any Encumbrances other than Permitted Encumbrances (as defined in Section 7). 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 Property (including public road access) in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed from the Seller to the Buyer.

(2) Provide for issuance of a final ALTA owner's title insurance policy, with any endorsements requested by Buyer, subject to the Permitted Encumbrances.

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

**7. REVIEW OF TITLE COMMITMENT AND SURVEY**

Buyer shall give Seller written notice, within thirty (30) days after the Contract Date, of any objections to the Survey or Title Commitment. Any exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a Permitted Encumbrance. If the Seller is unable or unwilling to correct the Buyer's title and survey objections within thirty (30) days after receipt of a written notice of Buyer's objection to a matter revealed by review of the Survey and/or Title Commitment, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Due Diligence Period. If Buyer fails to so terminate this Agreement, then such objections shall constitute Permitted Encumbrances as of expiration of the Due

Diligence Period, and Buyer shall acquire the Property without any effect being given to Buyer's title and survey objections.

## 8. DISPUTE RESOLUTION

A. Forum. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution.

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

## 9. NOTICES

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller, 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.

## 10. CLOSING

A. Timing of Closing. If the Buyer does not terminate this Agreement due to a breach of this Agreement by Seller, or without cause during the Due Diligence Period, the transfer of title contemplated by this Agreement (the "Closing") shall be held at the office of the Title Company on a mutually agreeable date not later than thirty (30) days after the end of the Due Diligence Period.

B. Closing Procedure.

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

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

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

(1) Buyer shall have no obligation to complete the transaction contemplated in this Agreement unless Seller removes from the Property 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 Property 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 Seller's 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.

#### **11. ACCEPTANCE OF PROPERTY "AS-IS"**

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

#### **12. TAXES**

Prior to Closing, Seller will pay all real property taxes accrued on or before the Closing Date. Buyer will have no liability for any amount of real property taxes on the Property.

#### **13. COMMISSIONS**

The Parties acknowledge that neither Buyer nor Seller is 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.

#### **14. INTERPRETATION; APPLICABLE LAW**

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

**15. ENTIRE AGREEMENT**

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

**16. ASSIGNMENT**

Buyer and Seller agree that this Agreement or any of its rights hereunder may not be assigned by Buyer, in whole or in part, without the prior written consent of Seller. In the event Buyer wishes to obtain Seller's consent regarding a proposed assignment of this Agreement, Seller may request and Buyer shall provide any and all information reasonably demanded by Seller in connection with the proposed assignment and/or the proposed assignee.

**17. 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.

**18. SELLER'S REPRESENTATIONS AND WARRANTIES**

The undersigned Seller represents and warrants to Buyer that Seller owns fee simple title to the Property and is fully empowered to sell the Property to Buyer under the terms and conditions stated in this Agreement. Further, Seller represents and warrants that the following are true and accurate as of the date Seller signs this Agreement:

(a) Seller has no knowledge of (i) any hazardous substance at, under, or upon the Property, or (ii) any hazardous substance released from the Property onto any other property or into the waters of the State of Indiana, the groundwater, or any publicly-owned or privately-owned well.

(b) To the best of Seller's knowledge, neither the Property nor Seller, due to any of Seller's past operations on the Property, are subject to any judicial or administrative proceedings or to any order from, or agreement with, any governmental authority respecting: (i) any violation or alleged violation of any environmental laws or (ii) any remedial action or (iii) any claims arising from the release or threatened release of a hazardous substance to, at or from the Property.

(c) Seller has not received any written or oral communications from any governmental authority informing Seller of any investigation being or to be conducted by a governmental authority with regard to the release or threatened release of a hazardous substance to, at or from the Property.

(d) No environmental lien has attached to or been asserted against all or any portion of the Property.

**19. ENVIRONMENTAL INDEMNITY**

Seller agrees to assume liability and to indemnify, hold harmless, and defend Buyer and the City, and their employees and agents, from and against any and all liabilities, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, of whatever kind and nature imposed on, incurred by or asserted against Buyer or the City, or their employees or agents, arising out of or from the environmental condition of the Property occurring and/or in existence prior to or at the time of the Closing Date over, underneath, in, or upon the Property or in the groundwater, brought by a third party or a governmental authority against Buyer or the City.

**20. 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.

**21. 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.**

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

[Signature page follows.]

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:

\_\_\_\_\_  
Sylvia Krol

4000.0000071 59372052.001

## **EXHIBIT A**

### **Description of Property**

A part of Bank Out Lot numbered Ninety-three (93) of the Second Plat of Out Lots of the Town, now City of South Bend, platted by the State Bank of Indiana, described as beginning at the intersection of the South line of Grace Street with the East line of Arnold Street in said City, running thence South along the East line of Arnold Street 7 rods to an alley; thence East 40 feet; thence North 7 rods to the South line of Grace Street; thence West 40 feet to the place of beginning, being also known as Lot Numbered Twenty-five (25) on the unrecorded Plat of Dunn's Subdivision of Bank Out Lot 93 in the City of South Bend.

Commonly known as 1124 W. Grace Street  
Parcel Key No. 018-3059-2322



**EXHIBIT B**

**Form of Warranty Deed**

**AUDITOR'S RECORD**

TRANSFER NO. \_\_\_\_\_

TAXING UNIT \_\_\_\_\_

DATE \_\_\_\_\_

KEY NO. \_\_\_\_\_

**WARRANTY DEED**

THIS INDENTURE WITNESSETH, that Sylvia Krol (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 "Property"):

A part of Bank Out Lot numbered Ninety-three (93) of the Second Plat of Out Lots of the Town, now City of South Bend, platted by the State Bank of Indiana, described as beginning at the intersection of the South line of Grace Street with the East line of Arnold Street in said City, running thence South along the East line of Arnold Street 7 rods to an alley; thence East 40 feet; thence North 7 rods to the South line of Grace Street; thence West 40 feet to the place of beginning, being also known as Lot Numbered Twenty-five (25) on the unrecorded Plat of Dunn's Subdivision of Bank Out Lot 93 in the City of South Bend.

Commonly known as 1124 W. Grace Street  
Parcel Key No. 018-3059-2322

The Grantor hereby conveys the Property 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:

\_\_\_\_\_  
Sylvia Krol

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Sylvia Krol and acknowledged the execution of the foregoing Warranty Deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Residing in St. Joseph County, Indiana

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.

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