



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: March 14, 2019  
FROM: David Relos, Property Development Manager  
SUBJECT: Agreement to Buy and Sell Real Estate (618 W. Marion)

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

This Agreement to Buy and Sell Real Estate (Agreement) is for the acquisition of 618 W. Marion. This property is in a key redevelopment target area at Charles Martin Dr. and LWW, and is the last property in this block needing to be acquired.

The Agreement includes a 30 day due diligence period, with closing to be completed 30 days thereafter.

Staff requests approval of this Agreement, to allow for the acquisition of this property.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_ N/A \_\_\_\_\_;  
Total Amount **new**/change (inc/dec) in budget: \_\_\_\_\_; Breakdown:  
Costs: Demolition Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
**Acquisition of Land/Bldg (circle one) Amt:** \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_ Going to BPW for Contracting? **N**  
Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

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

This Agreement To Buy And Sell Real Estate (“Agreement”) is made by and between James B. Williams, Jr., and Doris E. Williams, of 18445 Greenleaf Dr., South Bend, Indiana 46637 (“Sellers”) 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, cited as Indiana Code 36-7-14 (the “Act”).

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

C. The Property is situated in the River West Development Area and is set forth on the acquisition list related thereto, pursuant to Buyer’s Resolution 3256.

D. Sellers desire to sell the Property to the Buyer in accordance with Section 36-7-14-19 of the Act 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 Sellers agree as follows:

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

Sellers agree 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 Sellers (the “Contract Date”).

#### **2. PURCHASE PRICE**

The purchase price for the Property shall be Twenty-Seven Thousand Dollars (\$27,000.00) (the “Purchase Price”), payable by Buyer to Sellers as described in Section 7 (the “Closing,” the date of which is the “Closing Date”).

#### **3. BUYER’S DUE DILIGENCE**

A. Investigation. Sellers acknowledge 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. Sellers authorize 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, however, that Buyer may not take any action upon the Property which reduces the value thereof; and further provided that Buyer shall promptly restore the Property to its condition prior to entry, and agrees to defend, indemnify, and hold Sellers 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 Sellers, 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 Sellers and with no liability to Buyer, except as set forth herein.

#### **4. PRESERVATION OF TITLE AND CONDITION**

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

B. Sellers hereby covenant that Sellers will not alter the condition of the Property at any time after the date Sellers receive a copy of this Agreement as described in Section 1. Further, Sellers 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.

#### **5. TITLE COMMITMENT AND SURVEY**

Sellers acknowledge 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 Property as of the Contract Date. Buyer, at its option, may obtain a survey of the Property, at its sole expense. The Property 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 Sellers (the "Title Company"). The Title Commitment shall:

(1) Agree to insure good, marketable and indefeasible fee simple title to the Property 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 Sellers 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. SELLERS' REPRESENTATIONS AND WARRANTIES

The undersigned Sellers represent and warrant to Buyer that Sellers own fee simple title to the Property and are fully empowered to sell the Property to Buyer under the terms and conditions stated in this Agreement. Additionally, Sellers represent and warrant that they have disclosed to Buyer any notifications from any local, state, or federal authority regarding environmental matters pertaining to the Property.

## 7. CLOSING

A. Timing of Closing. If the Buyer does not terminate this Agreement due to a breach of this Agreement by Sellers, 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 Sellers, conditioned on Sellers' delivery of a warranty deed, substantially in the form attached hereto as **Exhibit B**, conveying the Property 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 Property 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: Buyer shall have no obligation to complete the transaction contemplated in this Agreement unless Sellers

remove 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 Sellers, and Buyer, in its sole discretion, may choose to exercise possession of and control over any such personal property.

F. Sellers' Due Diligence. Sellers acknowledge that Sellers have conducted their own due diligence and acknowledge that the Purchase Price is fair and reasonable and waive any right that Sellers may have to an appraisal or to contest or challenge the validity of compensation received under this Agreement.

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

Except as otherwise set forth herein, Buyer agrees to purchase the Property "as-is, where-is" and without any representations or warranties by Sellers as to the condition of the property or its fitness for any particular use or purpose. Sellers offer 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**

Sellers will pay all real property taxes accrued as of the Closing Date. Buyer will have no liability for any amount of real property taxes on the Property as of the Closing Date.

## **10. COMMISSIONS**

The Parties acknowledge that neither Buyer nor Sellers are represented by any broker in connection with the transaction contemplated in this Agreement. Buyer and Sellers 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 Sellers, 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 Sellers and Buyer and supersedes all prior discussions, understandings, or agreements between Sellers 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 Sellers, 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 March 2019.

BUYER:

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

By:

\_\_\_\_\_  
David Varner, Vice President

ATTEST:

By:

\_\_\_\_\_  
Donald E. Inks, Secretary

SELLERS:

\_\_\_\_\_  
James B. Williams, Jr.

\_\_\_\_\_  
Doris E. Williams

**EXHIBIT A**

**Description of Property**

Lot Numbered 8 in Smith and Jackson's Subdivision of Lots Numbered 7, 8, 9, 12, 13, 14, and 15 in Kent and Garrison's Subdivision of Out Lot No. 1 in Henricks and Grant's Addition to the Town, now City of South Bend, as per plat thereof recorded October 14, 1909 in Plat Book 9, page 112 in the Office of the Recorder of Saint Joseph County, Indiana.

Commonly known as 618 Marion Street, South Bend, Indiana 46601

Parcel Key No. 018-1055-2355



**EXHIBIT B**

**Form of Warranty Deed**

**AUDITOR'S RECORD**

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

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

DATE \_\_\_\_\_

KEY NO. 018-1055-2355

**WARRANTY DEED**

THIS INDENTURE WITNESSETH, that James B. Williams, Jr., and Doris E. Williams (the "Grantors")

CONVEY AND WARRANT 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"):

Lot Numbered 8 in Smith and Jackson's Subdivision of Lots Numbered 7, 8, 9, 12, 13, 14, and 15 in Kent and Garrison's Subdivision of Out Lot No. 1 in Henricks and Grant's Addition to the Town, now City of South Bend, as per plat thereof recorded October 14, 1909 in Plat Book 9, page 112 in the Office of the Recorder of Saint Joseph County, Indiana.

Commonly known as 618 Marion Street, South Bend, Indiana  
46601

Parcel Key No. 018-1055-2355

The Grantors hereby convey 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*

GRANTORS:

\_\_\_\_\_  
James B. Williams, Jr.

\_\_\_\_\_  
Doris E. Williams

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared James B. Williams, Jr., and Doris E. Williams, and acknowledged the execution of the foregoing Warranty Deed as their 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.