



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: March 14, 2019
FROM: David Relos, Property Development Manager
SUBJECT: Real Estate Purchase Agreement (2020 S. Main)

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

This Purchase Agreement is for the former EMI site at 2020 S. Main. This property was transferred from the County in 2009 after being up for tax sale for multiple years, and ultimately cleared and taken through the disposition process with an average appraised value of \$57,350 in 2012.

Staff has been approached with a \$60,000 offer to acquire the site. It appears from preliminary discussions that the portion needed to accommodate the retail development will be a little more than half the site, so the offer price will be prorated accordingly. The remaining portion will be retained for future development opportunities.

The property is planned to be rezoned Mixed Use, replatted, and must go through our Planning Team's review for site layout, pedestrian and vehicular accessibility, and building articulation.

Staff requests approval of this Agreement, to allow for the sale of a portion 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

REAL ESTATE PURCHASE AGREEMENT

This Agreement is made as of the Acceptance Date (defined in Paragraph 2) by and between CITY OF SOUTH BEND, DEPARTMENT OF REDEVELOPMENT, ACTING BY AND THROUGH ITS GOVERNING BODY, THE SOUTH BEND REDEVELOPMENT COMMISSION ("Seller"), and DEARBORN LAND INVESTMENT, LLC, an Ohio limited liability company, or its nominee or assignee ("Buyer").

1. Property. Seller owns and desires to sell to Buyer, and Buyer desires to purchase from Seller, the 1.09± acres of real property commonly known as 2020 S. Main Street, South Bend, St. Joseph County, Indiana, and identified by Tax Parcel Numbers 71-08-13-355-002.000-026, 71-08-13-355-003.000-026, and 71-08-13-355-004.000-026 as depicted on Exhibit "A" attached hereto and made a part hereof, together with all improvements now located on or in such real property and all rights, privileges, and easements appurtenant to such real property, and all of Seller's right, title and interest in and to any adjacent streets, alleys and rights of way (collectively, the "Property"), on the terms and conditions contained in this Agreement.

2. Purchase Price. The purchase price for the Property shall be \$60,000. Earnest money of \$1,500 (the "First Deposit") will be deposited with First American Title Insurance Company, Skylight Office Tower, 1660 West Second Street, Suite 700, Cleveland, Ohio 44113, Phone: (216) 802-3502, Facsimile Number: (714) 481-2529, Email: rgroetsch@firstam.com, Attn: Rebecca S. Groetsch (the "Escrow Agent") within fourteen (14) business days after the Acceptance Date and applied toward the purchase price. For purposes of this Agreement, the "Acceptance Date" shall be that day upon which this Agreement has been both (a) fully executed by Buyer and Seller, and (b) delivered to Buyer.

3. Title Defects.

(a) Buyer will order a commitment for an owner's policy of title insurance during the First Review Period (defined in Paragraph 5) with respect to the Property (the "Commitment"). The Commitment shall be in a form satisfactory to Buyer and shall commit to insure good and marketable title in fee simple, free and clear of all liens, encumbrances, easements, conditions or restrictions, except those that are acceptable to Buyer ("Permitted Exception(s)").

(b) If an exception to title not acceptable to Buyer appears on the Commitment, Buyer shall give Seller notice of the exception within thirty (30) days after receipt of both the Commitment and a current survey of the Property. Seller shall have a reasonable period, not to exceed thirty (30) days after notice from Buyer (the "Cure Period"), to remove the exception. If Seller cannot or will not do so within the Cure Period, then Buyer shall have the right (but not the obligation) to either (i) accept title to the Property subject to the exception, which shall then become a Permitted Exception, without reduction in the purchase price; or (ii) cancel and terminate this Agreement and receive a refund of all sums deposited pursuant to this Agreement. For purposes of clarification, in no event shall an exception that has been removed from the Commitment thereafter be deemed a Permitted Exception hereunder. Seller shall be required to remove at Closing (hereinafter defined) those exceptions that can be removed by paying an ascertainable sum of money such as mortgages, land contracts, liens, unpaid taxes, and special assessments.

4. Conveyance. Seller shall convey the Property to Buyer or its nominee by General Warranty Deed (the "Deed"), in recordable form, subject only to the Permitted Exceptions.

5. Closing. The closing of the purchase of the Property (the "Closing") shall be through escrow with Escrow Agent and shall occur within thirty (30) days after Buyer's delivery of a written closing notice to Seller and Escrow Agent. If the Closing Conditions (defined in Paragraph 7) have not been satisfied in Buyer's sole discretion by the end of the third (3rd) calendar month following the Acceptance Date ("First Review Period"), Buyer may extend such Review Period for up to two (2) additional Review Periods of three (3) calendar months each (respectively, the "Second Review Period" and "Third Review Period") by delivering written notice of each such election to Seller and Escrow Agent and simultaneously delivering to Escrow Agent an additional earnest money deposit of \$1,000 for each such extension (the "Second

Deposit” and “Third Deposit”, respectively), which sums shall be applicable to the purchase price and, except in the event of Seller’s default, or Buyer’s determination that item (e) of Paragraph 7 cannot be satisfied, shall become nonrefundable upon the expiration of the associated Review Period. (The First Review Period, Second Review Period and Third Review Period are sometimes hereinafter referred to collectively as the “Review Period”. The First Deposit, Second Deposit and Third Deposit are sometimes hereinafter referred to collectively as the “Deposits”.) If Buyer elects, prior to the expiration of the First Review Period, not to proceed under the Agreement, Buyer shall be entitled to terminate the Agreement, for any reason or for no reason, in which event the First Deposit shall be returned to Buyer.

6. Survey and Investigations. After the Acceptance Date, Buyer and its designated agents may enter the Property, at reasonable times, for the purpose of making surveys, inspecting the physical condition of the Property, and making soil and environmental tests or borings, provided that such operations are solely at Buyer’s expense and do not damage the Property. Seller agrees to cooperate with Buyer in its investigations and in its efforts to satisfy any contingencies with respect to its development of the Project, including the execution of related documentation. Within ten (10) days after the Acceptance Date, Seller shall deliver to Buyer, without charge, copies of all information knowingly in its possession relating solely to the Property, including, without limitation, any leases encumbering the Property; surveys; utility location information; soil and engineering studies or reports; environmental or hazardous waste audits; notices of violation or noncompliance with any environmental or hazardous substance requirements; and any other reports, studies, site plans and development information pertaining to the Property.

7. Conditions. Notwithstanding anything to the contrary contained in this Agreement, if the following items (collectively, the “Closing Conditions”) have not been satisfied in favor of and to Buyer’s complete satisfaction, as determined by Buyer at any time prior to the Closing, Buyer shall be entitled to terminate this Agreement, whereupon all refundable monies deposited by Buyer pursuant to this Agreement shall be returned to Buyer and monies rendered non-refundable shall be remitted to Seller. Said return and/or release shall be initiated by Buyer’s written notice to Seller and Escrow Agent in accordance with Paragraph 16 and, within seven (7) days thereafter, Escrow Agent shall disburse the Deposits pursuant to the previous sentence and the parties hereto shall thereafter be released from any and all obligations under this Agreement. The Closing Conditions are: (a) approval of the Property by any prospective tenant and/or assignee of Buyer (the “Project”); (b) obtaining financing for the Project upon terms and conditions acceptable to Buyer in Buyer’s sole and absolute discretion; (c) acquiring all final, non-appealable, zoning, traffic, DOT Permits and any other land use designations, approvals and permits as are necessary or required by any governmental or quasi-governmental entities for Buyer’s intended use of the Property, all as determined in Buyer’s sole discretion, including the subdivision or lot split of Seller’s parcel if required to create the Property; (d) availability and adequacy of utilities, either public or private; (e) absence of wetlands, hazardous wastes, or other adverse environmental or physical conditions; (f) annexation of the Property, if necessary; (g) approval from applicable governmental authorities of full access to South Main Street from the Project; and (h) acquiring any necessary easements.

Notwithstanding anything to the contrary contained in this Agreement, with respect to item (e) contained in this Paragraph 7, in no event shall the Deposits be deemed nonrefundable until such time Buyer has completed all of its environmental investigations as necessary to determine if such Closing Condition has been satisfied, in its sole discretion.

8. Covenants of Seller.

(a) Seller, at its sole expense, shall deliver possession of the Property to Buyer at Closing, free from any rights of possession of anyone whomsoever.

(b) From and after the Acceptance Date, Seller shall not: (i) suffer or permit any third party to adversely affect Seller’s title to or interest in the Property, and will not suffer or permit to be created any exceptions to the title of the Property other than the Permitted Exceptions; or (ii) enter into any contracts or agreements pertaining to the Property.

9. Building Design Review. Buyer agrees to build on the Property one (1) retail building (the “Building”). In addition to obtaining any and all approvals required by applicable

laws for its construction of the Building, Buyer will, before the Closing Date, cooperate in good faith with the City Planner for the City of South Bend, or his designee (the "City Planner") in developing its construction design and plans for the Building (the "Construction Plan"). Unless the City Planner, in his sole discretion, approves the following elements of the Construction Plan, Seller will have no obligation to close the transaction contemplated in this Agreement: (i) building articulation, (ii) ground floor interaction with street frontages, (iii) vehicular and pedestrian access, and (iv) final site plan. Buyer and Seller agree, in concept, to the preliminary site plan and aerial site plan attached hereto as Exhibit "B", and preliminary building elevations attached hereto as Exhibit "C", all subject to further modifications as may be required by the City Planner.

Once the engineered site plans have been approved by the City and land remains unneeded for the intended development, within five (5) days of notification to Seller of the final site plan's approval, Seller shall have the right to notify Buyer of its decision to retain such unneeded land. Seller may also elect, at its discretion, prior to Closing, to replat the Property into two lots, and the southernmost lot will be the Property to be sold to Buyer, and the northern lot will be retained by Seller. Seller agrees that any such replatting will be commenced within thirty (30) days of its notification to Buyer to retain such unneeded land, and shall be a condition precedent of Closing.

If Seller makes such election and provides notice to Buyer, then, prior to Closing, this Agreement shall be amended to modify the adjusted size of the Property, along with a proportionate reduction to the purchase price.

10. **Representations and Warranties of Seller.** In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer that: (a) fee simple ownership of the Property is vested solely in Seller and no other person or entity has any right, title, or interest in or to the Property; (b) no proceedings of any type (including condemnation or similar proceedings), to Seller's knowledge, are being contemplated against the Property or any part thereof; (c) the Property is not subject to any leases (written or oral), unrecorded easements, options to purchase, rights of first purchase or refusal, or any other agreement or contract to use, lease, or purchase the Property; and (d) to the best of Seller's knowledge: (i) no hazardous substances have been stored or used on the Property by Seller, and (ii) there are presently no hazardous substances in, on, or under the Property. All representations and warranties contained in this **Paragraph 10** or elsewhere in this Agreement shall be deemed remade as of Closing and shall survive Closing. Notwithstanding anything contained in this Agreement, Seller makes no representations or warranties with regard to the Property's fitness for any particular use or purpose.

11. **Provisions with Respect to Closing.** On or before the date of Closing: (a) Seller shall deliver to Escrow Agent (i) the Deed, (ii) all necessary executed state, county and municipal real estate transfer declarations (if any), (iii) a "Seller's Affidavit", as required by the title insurer, (iv) a "Non-Foreign Seller Affidavit", in compliance with Section 1445 of the Internal Revenue Code, and (v), in the event Seller is a business entity, Seller's formation documents, incumbency certificate, and evidence of authority to consummate this Agreement; and (b) Buyer shall deliver to Escrow Agent the purchase price, less the Deposits and any other deductions permitted by this Agreement. Provided that both parties have timely delivered to Escrow Agent the foregoing items, the time provided for Closing in **Paragraph 5** shall automatically extend for such time as the Escrow Agent reasonably needs to complete the Closing process (e.g., filing of deeds or other documents, obtaining governmental approval of legal descriptions, etc.).

12. **Adjustments at Closing.** Adjustments to the purchase price between Seller and Buyer shall be made by Escrow Agent for the following items, prorated on a per diem basis as of 11:59 p.m. of the day preceding the date of Closing: (a) real estate taxes and other state or city taxes, charges and assessments, not yet due and payable, on the basis of the calendar year for which the same are levied or assessed (if the rate of any such taxes, charges or assessments shall not be fixed before the date of the Closing, the adjustment thereof at the Closing shall be calculated in accordance with local custom) and there shall be no later re-prorations; and (b) water and sewer rents, fees, and charges with respect to the Property. Seller shall pay in full, by deduction from the purchase price, any assessments, either general or special, whether material or immaterial, for improvements completed prior to Closing, the amount of any stamp tax, state, county, or local transfer tax, and similar fees imposed upon the conveyance of real property by

applicable law, any land use change tax or assessment, any rollback tax or other assessment due pursuant to any agricultural property tax recoupment program, the cost of an owner's policy of title insurance in the amount of the purchase price with respect to the Property, and one-half (1/2) of the escrow fee. All other fees, recording costs, charges or expenses incidental to the sale and transfer of the Property to Buyer, except as otherwise expressly provided herein, shall be paid according to the custom of real estate transactions consummated in the county in which the Property is located, as determined by Escrow Agent. All bills for utility services to the Property shall also be paid in full by Seller as of the Closing, and all such utility services shall be transferred by Seller into Buyer's name.

32. Waiver. The exercise (or failure to exercise) of any one of Buyer's rights or remedies under this Agreement shall not be deemed to be in lieu of, or a waiver of, any other right or remedy contained herein or provided by law, except to the extent inconsistent herewith.

14. Remedies.

(a) If Seller defaults in any of its obligations under this Agreement, then provided Buyer is not in default hereunder (and provided Buyer has notified Seller of the specific nature of the default and allowed Seller a ten (10) business day period to cure such default (the "Remedy Period")), Buyer may either: (i) declare this Agreement terminated, in which event all the Deposits shall be returned to Buyer and thereafter all rights and obligations of the parties hereunder shall be terminated; or (ii) enforce specific performance of Seller's obligations under this Agreement.

(b) If Buyer defaults in any of its obligations under this Agreement, then provided Seller is not in default hereunder (and provided Seller has notified Buyer of the specific nature of the default and allowed Buyer the Remedy Period), Seller may declare this Agreement terminated, in which event the Deposits shall be forfeited to Seller as liquidated damages and as Seller's sole and exclusive remedy, and all other rights and obligations of the parties hereunder shall be terminated.

15. Commissions. Pursuant to the terms of a separate agreement between Buyer and FM Stone ("Broker"), Buyer shall pay at Closing any real estate brokerage commission due Broker in connection with this transaction. Seller represents that it has not dealt with any brokers and hereby agrees to indemnify and hold Buyer harmless with respect to any claim, including the cost of counsel fees, made by any real estate broker claiming to have represented Seller in connection with this transaction. Buyer represents that it has not dealt with any brokers other than Broker and hereby agrees to indemnify and hold Seller harmless with respect to any claim, including the cost of counsel fees, made by any real estate broker claiming to have represented Buyer in connection with this transaction.

16. Notices. All notices, requests, waivers, and other communications under this Agreement shall be in writing and shall be deemed properly served upon delivery (a) by hand; (b) by sender to the applicable carrier if sent postage prepaid by United States Registered or Certified Mail, Return Receipt Requested; (c) by sender to a nationally recognized overnight express mail courier; or (d) by electronic transmission to the following email addresses or facsimile numbers (with notification of receipt):

(a) If intended for Buyer: to Dearborn Land Investment, LLC, 14600 Detroit Avenue, Suite 1500, Lakewood, Ohio 44107, Email: cofftermatt@zarembagroup.com, Facsimile Number: (216) 227-1786, Attn: Carrie Offermatt, Real Estate Transaction Manager, with a copy to Escrow Agent;

(b) If intended for Seller: to David Relos, City of South Bend, 1400 South, 227 W. Jefferson Blvd., South Bend, IN 46601, Email: drelos@southbendin.gov, with a copy to Escrow Agent;

or to such other addresses or facsimile numbers as Seller or Buyer shall have given notice of to the other as herein provided.

17. Time Periods. Any time period provided for herein which shall end on a weekend or legal holiday shall extend to 5:00 p.m. of the next business day.

18. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

19. Assignment. Seller hereby agrees that Buyer may, at any time after the date hereof, assign or otherwise transfer all of Buyer's right, title and interest in and to this Agreement to an entity under common control with Buyer. Buyer shall not assign this Agreement to an unrelated third party without the prior written consent of Seller.

20. Married Seller. If Seller is married, Seller's spouse shall also sign this Agreement and join in the conveyance.

21. Escrow Agreement. Escrow Agent joins herein for the purpose of agreeing to serve as Escrow Agent, subject to the provisions of this Agreement. By signing this Agreement, Seller and Buyer agree that:

(a) in performing any of its duties hereunder, Escrow Agent shall not be liable for any loss, costs or damage which it may incur as a result of serving as Escrow Agent, except to the extent arising out of its willful default or gross negligence;

(b) Seller and Buyer shall each indemnify and hold harmless Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees and disbursements, which may be incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder, except to the extent resulting from Escrow Agent's willful default or gross negligence in performing its obligations hereunder;

(c) in the event of dispute between any of the parties hereto, sufficient in the discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction all money or property held by it under the terms of this Agreement and to file such legal pleadings as it deems appropriate and upon receipt of said money or property by such court, Escrow Agent shall be discharged from any and all further responsibility with respect to this Agreement. Escrow Agent shall be entitled to withdraw from the Escrow Fund its reasonable costs of filing such pleadings;

(d) the parties agree and acknowledge that the Escrow Agent has no liability in connection with Deposit in the event of failure or insolvency of the financial institution in which the Deposit is deposited, so long as it is a reputable institution at the time the Deposit is made; and

(e) in its capacity as Escrow Agent, Escrow Agent shall not be responsible for the genuineness or validity of any security, instrument, document or item deposited with it, and shall have no responsibility other than to faithfully follow the instructions contained herein, and it is fully protected in acting in accordance with any written instrument given to it hereunder by any of the parties hereto and believed by Escrow Agent to have been signed by the proper person. Escrow Agent may assume that any person purporting to give any notice hereunder and representing that they have authority to do so has been duly authorized to do so.

22. Original Agreement. The parties hereby agree that a facsimile or electronic mail copy of this Agreement may be transmitted by either party and deemed an original for purposes hereof.

23. Like Kind Exchange. Each party agrees to cooperate with the other, at the requesting party's election (and at the requesting party's cost), in effecting a tax-deferred, like-kind exchange with respect to the Property, pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended.

24. Interpretation and 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.

25. Dispute Resolution and Waiver of Jury Trial. 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. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

26. Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

27. Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

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

29. Binding Effect. 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 and delivered by Buyer and Seller.

30. Authority and Existence. The undersigned persons executing and delivering this Agreement on behalf of the respective Parties represent and certify that they are the duly authorized representatives of each and have been fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done. Further, the undersigned representative of Buyer represents and warrants that Buyer is duly organized, validly existing, and in good standing under the laws of the State of Ohio.

31. Time. Time is of the essence of this Agreement.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Agreement.

WITNESSES:

Donald E. Inks

Mary Brazinsky



Susan K. Albers



Doris E. Ardo

SELLER:

CITY OF SOUTH BEND
DEPARTMENT OF
REDEVELOPMENT, ACTING BY AND
THROUGH ITS GOVERNING BODY,
THE SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____

Its: _____

35-6001201
Federal Employer Identification Number

Date: _____

BUYER:

DEARBORN LAND INVESTMENT, LLC,
an Ohio limited liability company

By: 

Al Sulin

Its: Vice President

Date: 3-12-2019

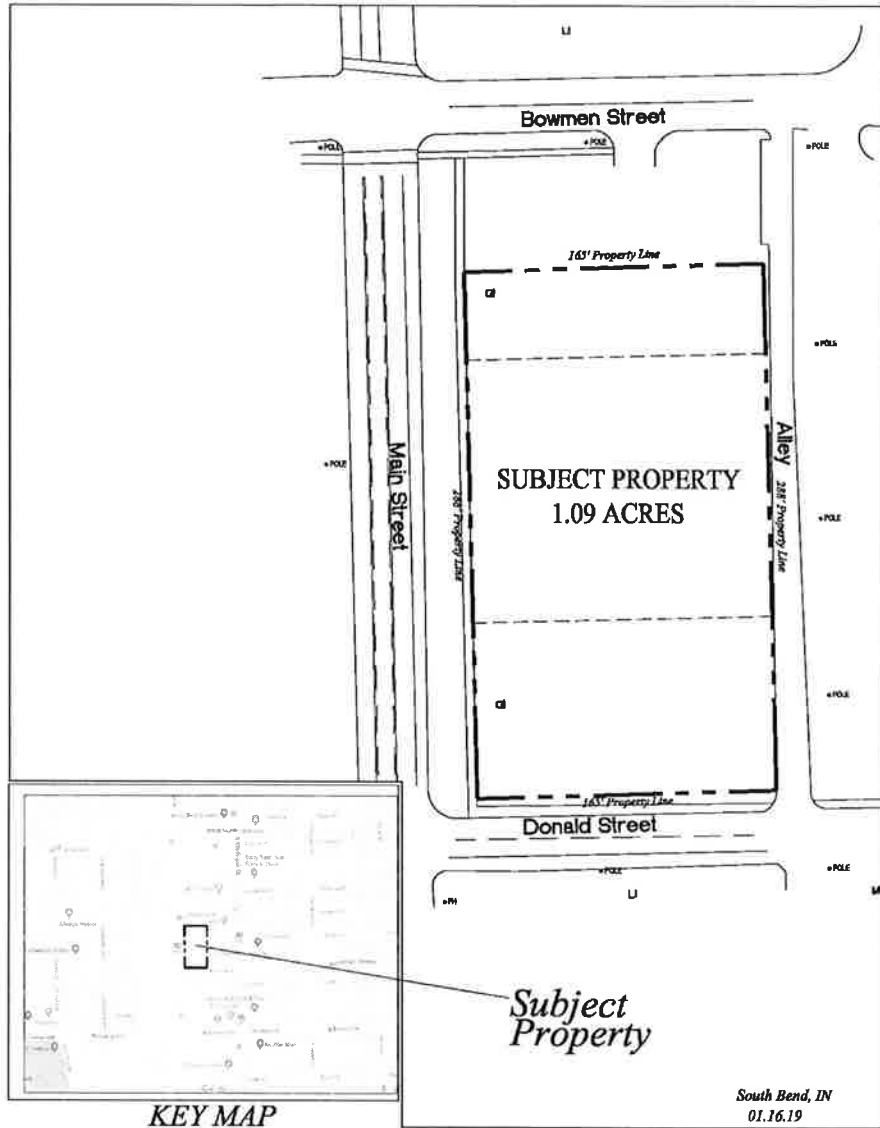
ESCROW ACKNOWLEDGEMENT
(with respect to Paragraph 21 hereof only):

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: _____

Rebecca S. Groetsch

EXHIBIT A



KEY MAP

South Bend, IN
01.16.19

EXHIBIT "B"



EXHIBIT "C"

