



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: June 27, 2019

FROM: David Relos, Property Development Manager

SUBJECT: Agreement to Buy and Sell Real Estate (117 S. William)

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 117 S. William St. This property is a paved parking lot containing approximately 56 parking spaces and is near Commission owned properties, which could be helpful for the redevelopment of those sites.

The Agreement includes a \$78,000 purchase price, 30 day due diligence period with closing to be completed 30 days thereafter. Funding for this acquisition will be from a 2019 EDIT allocation.

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 Mary Coyne Investments, L.L.C., an Ohio limited liability company, with an address of 1428 Hamilton Avenue, Cleveland, Ohio 44114 ("Seller") and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, with an address of 227 W. Jefferson Boulevard, Suite 1400 S, South Bend, Indiana 46601 ("Buyer") (each a "Party" and together the "Parties").

RECITALS

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

B. In furtherance of its purposes under the Act, Buyer desires to purchase from Seller certain real property located at 117 S William Street 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 No. 3485.

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 Seller agree as follows:

1. PURCHASE AND SALE OBLIGATION

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 Seventy-Eight Thousand Dollars (\$78,000.00) (the "Purchase Price"), payable by Buyer to Seller as described in Section 7 (the "Closing," the date of which is the "Closing Date").

3. BUYER'S DUE DILIGENCE

A. **Investigation.** Seller acknowledges that Buyer's determination to purchase the 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 on or prior to the Due Diligence Period (as defined below), 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, however, that Buyer may not undertake any invasive testing without the prior written consent of Seller or 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 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 and with no liability to Buyer, except as set forth herein. If Buyer fails to deliver written notice of termination to Seller prior to the expiration of the Due Diligence Period, then Buyer shall be deemed to have waived any right of termination under this Section 3.

4. PRESERVATION OF TITLE AND CONDITION

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

B. Seller hereby 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 or cause to be released 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

Seller acknowledges that Buyer has obtained 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, except for easments, restrictions and other matters of record that do not materially, adversely affect good, marketable and indefeasible fee simple title to the Property. 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 in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed from the Seller to the Buyer.

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

Regardless of whether this transaction closes, Seller 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 Seller represents and warrants to Buyer that Seller owns 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, Seller represents and warrants that it has disclosed to Buyer any notifications from any local, state, or federal authority regarding environmental matters pertaining to the Property.

7. CLOSING

A. Timing of Closing. If the Buyer does not terminate this Agreement due to a breach of this Agreement by Seller, or without cause during the Due Diligence Period, the transfer of title contemplated by this Agreement (the "Closing") shall be held at the office of the Title Company on a mutually agreeable date not later than 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 special 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 except for easments, restrictions and other matters of record that do not materially, adversely affect good, marketable and indefeasible fee simple title to

the Property 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 Seller removes from the Property before the Closing Date all personal property, including 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 its own due diligence and acknowledges that the Purchase Price is fair and reasonable and waives any right that Seller may have to an appraisal or to contest or challenge the validity of compensation received under this Agreement.

8. ACCEPTANCE OF 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 Seller as to the condition of the property or its fitness for any particular use or purpose. Seller offers no such representation or warranty as to condition or fitness, and nothing in this Agreement shall be construed to constitute such a representation or warranty as to condition or fitness.

9. TAXES

Seller will pay all real property taxes accrued as of the Closing Date. 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 Seller are represented by any broker in connection with the transaction contemplated in this Agreement. Buyer and Seller agree to indemnify and hold one another harmless from any claim for commissions in connection with the transaction contemplated in this Agreement.

11. APPLICABLE LAW; JURISDICTION

This Agreement shall be interpreted and enforced according to the laws of the State of Indiana. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana.

12. NOTICES

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller, or to Buyer in care of Buyer's Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn: Corporation Counsel) at the respective addresses stated in Section 1 above. Either Party may, by written notice, modify the address for future notices to such Party.

13. ENTIRE AGREEMENT

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

14. COUNTERPARTS; SIGNATURES

This Agreement may be separately executed in counterparts by Buyer and Seller, and the same, when taken together, will be regarded as one original Agreement. Facsimile signatures will be regarded as original signatures.

15. AUTHORITY TO EXECUTE

The undersigned persons executing and delivering this Agreement on behalf of the Parties each represent and certify that they are the duly authorized representatives of the respective Parties 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 June 2019.

BUYER:

South Bend Redevelopment
Commission

By:

Marcia I. Jones, President

ATTEST:


By:

Quentin Phillips, Secretary

SELLER:

Mary Coyne Investments, L.L.C.

By:



Mary Coyne, Member

EXHIBIT A

Description of Property

PARCEL I: Lot Numbered Five (5) and the North Half of Lot Numbered Six (6) in Block Numbered Two as shown on the recorded Plat of William S. Vail's Addition to the City of South Bend, recorded April 23, 1860 in Plat Book 1, page 30 in the Office of the Recorder of St. Joseph County, Indiana.

PARCEL II: Lot Numbered Seven (7) and the South Half of Lot Numbered Six (6) in Block Numbered Two as shown on the recorded Plat of William S. Vail's Addition to the City of South Bend, recorded April 23, 1860 in Plat Book 1, page 30 in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-3010-0325

EXHIBIT B

Form of Warranty Deed

AUDITOR'S RECORD

TRANSFER NO. _____

TAXING UNIT _____

DATE _____

KEY NO. 018-3010-0325

WARRANTY DEED

THIS INDENTURE WITNESSETH, that Mary Coyne Investments, L.L.C. (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"):

PARCEL I: Lot Numbered Five (5) and the North Half of Lot Numbered Six (6) in Block Numbered Two as shown on the recorded Plat of William S. Vail's Addition to the City of South Bend, recorded April 23, 1860 in Plat Book 1, page 30 in the Office of the Recorder of St. Joseph County, Indiana.

PARCEL II: Lot Numbered Seven (7) and the South Half of Lot Numbered Six (6) in Block Numbered Two as shown on the recorded Plat of William S. Vail's Addition to the City of South Bend, recorded April 23, 1860 in Plat Book 1, page 30 in the Office of the Recorder of St. Joseph County, Indiana.

Parcel Key No. 018-3010-0325

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:

MARY COYNE INVESTMENTS L.L.C.

By: Mary Coyne
Mary Coyne, Member

STATE OF OHIO)
) SS;
CUYAHOGA COUNTY)

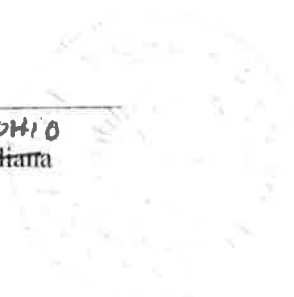
Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Mary Coyne Investments L.L.C., and acknowledged the execution of the foregoing Warranty Deed as their true act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 23 day of JUNE, 2019.

My Commission Expires:

~~MICHAEL F. COYNE, Notary Public, State of Ohio
My comm. has no exp. date
Section 147.03 R.C.~~

Michael F. Coyne
Notary Public CUYAHOGA OHIO
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.