

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this “Agreement”) is made on July 11, 2019 (the “Contract Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) and the St. Joseph County Public Library (“Buyer”) (each a “Party” and together the “Parties”).

RECITALS

A. Seller exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, as set forth in Ind. Code 36-7-14 (the “Act”).

B. Buyer exists and operates as a public library pursuant to Ind. Code 36-12.

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

D. On November 14, 2013, Seller and Buyer entered into an Option Agreement for the purchase of the Property, which agreement set forth the terms and conditions of the purchase with specificity (the “Option Agreement”).

E. The Parties agreed to extend the term of the Option Agreement in a Memorandum of Understanding, made effective November 8, 2018 (the “Memorandum”), in which Buyer’s right to exercise its option to purchase the Property was extended through December 31, 2019.

F. By letter dated May 1, 2019, the Buyer notified the Seller that it wished to exercise the option pursuant to the terms of the Option Agreement.

NOW, 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 PRICE

A. Purchase Price. Pursuant to Section 2(a) of the Option Agreement, the total purchase price for the Property is One Hundred Sixty-Three Thousand Two Hundred Dollars (\$163,200.00) (the “Purchase Price”).

B. Option Payment. In conjunction with the execution of the Option Agreement and pursuant thereto, Buyer made to Seller the option payment of Fifty-Two Thousand Five Hundred Thirty-Four Dollars (\$52,534.00), which amount shall be applied as a credit to the Purchase Price at the closing described in Section 4 below (the “Closing,” the date of which is the “Closing Date”).

C. Seller’s Donation. In furtherance of Buyer’s expansion, renovation, and improvement of the Main Branch of the Public Library located at 304 South Main Street, South

Bend, Indiana, as described more particularly in the Memorandum (the “Buyer’s Project”), and in accordance with Ind. Code Section 36-7-14-12.2(a)(3), the Seller has agreed to waive the remaining amount of the Purchase Price that is due to Seller in the amount of One Hundred Ten Thousand Six Hundred Sixty-Six Dollars (\$110,666.00).

2. **BUYER’S DUE DILIGENCE**

Buyer acknowledges that it completed its due diligence prior to exercising its option to purchase the Property and agrees that it finds the Property feasible for the Buyer’s Project, in accordance with the determinations set forth with particularity in the Option Agreement.

3. **PRESERVATION OF TITLE**

After the Contract Date, 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”). Seller acknowledges that Buyer has selected a title company (the “Title Company”) and obtained, at Buyer’s sole expense, and intends to rely upon a commitment for title insurance on the Property (the “Title Commitment”) identifying all Encumbrances as of the Contract Date. Buyer acknowledges that it has no objections to the existing Encumbrances, which shall be considered “Permitted Encumbrances.”

4. **CLOSING**

A. **Timing of Closing.** Unless this Agreement is earlier terminated, the Closing shall be held at the office of the Title Company, and the Closing Date shall be a mutually agreeable date not later than thirty (30) days after the Contract Date.

B. **Closing Procedure.**

(i) At Closing, Seller shall deliver to Buyer the Deed, in the form attached hereto as **Exhibit B**, conveying the Property to Buyer, free and clear of all liens, encumbrances, title defects, and exceptions other than the Permitted Encumbrances, and the Title Company’s delivery of the marked-up copy of the Title Commitment (or pro forma policy) to Buyer.

(ii) Possession of the Property shall be delivered to the Buyer at Closing, in substantially the same condition as it existed on the Contract Date, ordinary wear and tear and casualty excepted.

Notwithstanding any provision of this Agreement to the contrary, in the event this transaction is not completed, Seller shall have no liability for any of Buyer’s losses, damages, costs, or expenses of any kind, including attorney fees, incurred in connection with its proposed acquisition of the Property under the Option Agreement.

C. **Closing Costs.** Buyer shall pay the cost of the title policy and all of the Title Company’s title search, closing and/or document preparation fees, and all recordation costs associated with the transaction contemplated in this Agreement.

5. 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 will be construed to constitute such a representation or warranty as to condition or fitness.

6. TAXES

Buyer, and Buyer’s successors and assigns, shall be liable for any and all real property taxes assessed and levied against the Property with respect to the year in which the Closing takes place and for all subsequent years. Seller shall have no liability for any real property taxes associated with the Property, and nothing in this Agreement shall be construed to require the proration or other apportionment of real property taxes resulting in Seller’s liability therefor.

7. REMEDIES

Upon any default in or breach of this Agreement by either Party, the defaulting Party will proceed immediately to cure or remedy such default within ten (10) days after receipt of written notice of such default or breach from the non-defaulting Party, or, if the nature of the default or breach is such that it cannot be cured within ten (10) days, the defaulting Party will diligently and in good faith pursue and prosecute to completion an appropriate cure within a reasonable time, and the Parties shall agree to an appropriate extension of the Closing Date (the “Extended Closing Date”). In the event of a default or breach that remains uncured beyond the Extended Closing Date, the non-defaulting Party may terminate this Agreement, commence legal proceedings, including an action for specific performance, or pursue any other remedy available at law or in equity. All the Parties’ respective rights and remedies concerning this Agreement and the Property are cumulative.

8. COMMISSIONS

The Parties mutually acknowledge and warrant to one another 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 harmless one another from any claim for commissions in connection with the transaction contemplated in this Agreement.

9. 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.

10. DISPUTE RESOLUTION; 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.

11. WAIVER

Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

12. 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.

13. 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.

14. ASSIGNMENT

Buyer and Seller agree that this Agreement or any of Buyer's 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, Buyer shall provide any and all information reasonably demanded by Seller in connection with the proposed assignment and/or the proposed assignee.

15. BINDING EFFECT; COUNTERPARTS; SIGNATURES

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. 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. Electronically transmitted signatures will be regarded as original signatures.

16. AUTHORITY TO EXECUTE; 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.

17. TIME

Time is of the essence of this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby execute this Real Estate Purchase Agreement to be effective as of the Contract Date stated above.

BUYER:

ST. JOSEPH COUNTY PUBLIC LIBRARY

Printed:

Its:

Dated:

SELLER:

SOUTH BEND REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Quintin Phillips, Secretary

EXHIBIT A

Description of Property

Parcel Key Nos. 018-3008-027802
 018-3008-0279
 018-3008-0280
 018-3008-0281
 018-3008-0282
 018-3008-028301

More particularly described as follows:

Parcel I: The South Twenty-one and Twenty-five Hundredths (21.25) feet of Lot Numbered 296 as shown on the recorded Original Plat of the Town, now City, of South Bend, together with the East Half of the vacated alley lying West and adjacent.

Parcel II: Lot Numbered 297 as shown on the Original Plat of the Town, now City, of South Bend, together with the North Half of the vacated alley lying South and adjacent and also together with the East Half of the vacated alley lying West and adjacent.

Parcel III: A lot or parcel of land 35 feet in width, North and South, taken off of and from the entire length of the North side of Lot Numbered 298 as shown on the Original Plat of the Town, now City, of South Bend, together with the South Half of the vacated alley lying North and adjacent and also together with the East Half of the vacated alley lying West and adjacent.

Parcel IV: A part of Lot Numbered 298 as shown on the Original Plat of the Town, now City, of South Bend, which part is described as follows: Beginning at a point Thirty-five (35) feet South of the Northeast corner of said lot; thence running South Fifteen and Five-sixths (15-5/6) feet; thence West One Hundred Sixty-five (165) feet to the West line of said lot; thence North, on said West line, Fifteen and Five-sixths (15-5/6) feet; thence East One Hundred Sixty-five (165) feet to the place of beginning, together with the East Half of the vacated alley lying West and adjacent.

Parcel V: A parcel of land Fifteen and One-Sixth (15-1/6) feet in width, taken off of the entire length of the South side of Lot Numbered 298, and another parcel of land Four (4) inches in width taken off of the entire length of the North side of Lot Numbered 299 as shown on the Original Plat of the Town, now City, of South Bend, together with the East Half of the vacated alley lying West and adjacent.

Parcel VI: A parcel of land Sixteen and One-half (16-1/2) feet wide taken off of the North side of Lot Numbered 299 as shown on the Original Plat of the Town, now City, of South Bend, excepting therefrom a strip of land Four (4) inches in width taken off of the entire length of the North side of said Sixteen and One-half (16-1/2) foot strip.

EXHIBIT B

Form of Warranty Deed

AUDITOR'S RECORD

TRANSFER NO. _____

TAXING UNIT _____

DATE _____

KEY NOS. 018-3008-027802

018-3008-0279

018-3008-0280

018-3008-0281

018-3008-0282

018-3008-028301

WARRANTY DEED

THIS INDENTURE WITNESSETH, that the City of South Bend, 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 "Grantor")

CONVEYS AND WARRANTS to the St. Joseph County Public Library, with an address at 304 S. Main Street, 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 real estate located in St. Joseph County, Indiana and more particularly described on Exhibit A (the "Property").

The Grantor warrants title to the Property only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.

The Grantor hereby conveys the Property to the Grantee free and clear of all leases or licenses; subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in the Commission's River West Development Area plan, as amended from time to time, and any design review guidelines associated therewith, as well as that certain Memorandum of Understanding, dated November 8, 2018, between the Grantor and the Grantee with respect to the development of the Property.

The Grantor conveys the Property to the Grantee subject to the limitation that the Grantee, and its successors and assigns, shall not discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

Each of the undersigned persons executing this deed on behalf of the Grantor represents and certifies that s/he is a duly authorized representative of the Grantor and has been fully empowered, by proper action of the governing body of the Grantor, to execute and deliver this deed, that the Grantor has

full corporate capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.

GRANTOR:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

Marcia I. Jones, President

ATTEST:

Quentin Phillips, Secretary

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Quentin Phillips, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Special Warranty Deed.

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

Mary C. Brazinsky, Notary Public
Resident of St. Joseph County, Indiana
Commission expires: December 12, 2024

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, County-City Building, 227 W Jefferson Blvd., Ste. 1200S, South Bend, IN 46601.

EXHIBIT A

Description of Property

Parcel Key Nos. 018-3008-027802
 018-3008-0279
 018-3008-0280
 018-3008-0281
 018-3008-0282
 018-3008-028301

More particularly described as follows:

Parcel I: The South Twenty-one and Twenty-five Hundredths (21.25) feet of Lot Numbered 296 as shown on the recorded Original Plat of the Town, now City, of South Bend, together with the East Half of the vacated alley lying West and adjacent.

Parcel II: Lot Numbered 297 as shown on the Original Plat of the Town, now City, of South Bend, together with the North Half of the vacated alley lying South and adjacent and also together with the East Half of the vacated alley lying West and adjacent.

Parcel III: A lot or parcel of land 35 feet in width, North and South, taken off of and from the entire length of the North side of Lot Numbered 298 as shown on the Original Plat of the Town, now City, of South Bend, together with the South Half of the vacated alley lying North and adjacent and also together with the East Half of the vacated alley lying West and adjacent.

Parcel IV: A part of Lot Numbered 298 as shown on the Original Plat of the Town, now City, of South Bend, which part is described as follows: Beginning at a point Thirty-five (35) feet South of the Northeast corner of said lot; thence running South Fifteen and Five-sixths (15-5/6) feet; thence West One Hundred Sixty-five (165) feet to the West line of said lot; thence North, on said West line, Fifteen and Five-sixths (15-5/6) feet; thence East One Hundred Sixty-five (165) feet to the place of beginning, together with the East Half of the vacated alley lying West and adjacent.

Parcel V: A parcel of land Fifteen and One-Sixth (15-1/6) feet in width, taken off of the entire length of the South side of Lot Numbered 298, and another parcel of land Four (4) inches in width taken off of the entire length of the North side of Lot Numbered 299 as shown on the Original Plat of the Town, now City, of South Bend, together with the East Half of the vacated alley lying West and adjacent.

Parcel VI: A parcel of land Sixteen and One-half (16-1/2) feet wide taken off of the North side of Lot Numbered 299 as shown on the Original Plat of the Town, now City, of South Bend, excepting therefrom a strip of land Four (4) inches in width taken off of the entire length of the North side of said Sixteen and One-half (16-1/2) foot strip.