

AGREEMENT TO BUY AND SELL REAL ESTATE

This Agreement to Buy and Sell Real Estate (“Agreement”) is made by and between the Frederick G. Buechner and Barbara Gail Parr Martin Buechner Revocable Living Trust as amended and restated on the 11th day of December 1991 (“Seller”) and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission of 1400 S., 227 W. Jefferson Blvd., 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, being Indiana Code 36-7-14 (the “Act”).

B. Pursuant to Section 19.5 of the Act, Buyer may acquire property that meets certain conditions from a willing seller without an appraisal (the “Acquisition Section”).

C. On February 27, 2020, the Buyer passed Resolution No. 3517 (the "Resolution") which declares blighted, unsafe, and/or abandoned, certain real property located in the River West Development Area of South Bend, Indiana (the "City") and commonly known as 603 West Marion Street, which is more particularly described on Exhibit A (the "Property").

D. The Resolution allows the Buyer to negotiate with a willing seller for the purchase of the Property.

E. In accordance with the Resolution and in furtherance of its purposes under the Act, Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer in accordance with the terms of 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 collective purchase price for the Property shall be One Thousand Dollars (\$1,000.00) (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, 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; 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.

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 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 may obtain, 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 may be issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company"). The Title Commitment, if issued, 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, Buyer shall be responsible for the title search charges, the cost of the Title Commitment and owner's policy.

6. 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. 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 occur 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 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. Closing Costs. Buyer shall pay the Title Company's closing fee and all recordation costs associated with the transaction contemplated in this Agreement.

D. 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.

E. 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

Buyer agrees to pay all real property taxes for the Property accrued in tax year 2020.

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 represent and certify that they are the duly authorized representatives of their respective Party 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 2nd day of June 2020.

BUYER:

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

By:

Donald E. Inks, Vice President

ATTEST:

By:

Quentin M. Phillips, Secretary

SELLER:

Frederick G. Buechner and Barbara Gail Parr Martin Buechner Revocable Living Trust as amended and restated on the 11th day of December 1991

By:

Stephanie K. Oberlie
Harbour Trust & Investment Management Company
Signature **BY:** _____
Stephanie K. Oberlie, President & COO

Name Printed

Title

EXHIBIT A

Description of Property

Legal Description: Fifty-four (54') feet off of and from the South End of the East one-half (1/2) of Lot Numbered 66, and Fifty-four (54') feet off of and from the South End of the East one-half (1/2) of Lot Numbered 65, as shown on the recorded Plat of Henricks and Grant's Addition to the Town, now City of South Bend, Indiana.

Property Address: 603 West Marion Street, South Bend, 46616

Tax Key Number: 018-1021-0868

State Parcel ID: 71-08-02-476-051.000-026

EXHIBIT B

Form of Warranty Deed