



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 11/15/23
FROM: Joseph Molnar
SUBJECT: Purchase Agreement 214 W Wayne

_____ Pres/V-Pres

ATTEST: _____ Secretary

Date: _____

APPROVED Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

PURPOSE OF REQUEST: Approval of a Purchase Agreement for the property located at 214 W Wayne

Specifics: Over the past two years, the Redevelopment Commission has successfully sold or agreed to sell several of the larger downtown properties in its portfolio. This included the sale of the former Salvation Army Building and agreements to sell the former Fat Daddys site and the large fields across from Four Winds field. All three of these projects are set to move forward creating new housing opportunities – affordable and market rate – and new commercial spaces. City Staff have also announced the beginning of the process for the creation of a “Downtown Plan” to better plan for upcoming downtown growth.

Staff believe because of the recent successes in redeveloping RDC owned land downtown and the beginning of a downtown planning process, now would be a good time to purchase the parking lot at 214 W Wayne. The City currently rents this parking lot from the owner, Mary Coyne Investments LLC. Staff believe it would be advantageous for future development opportunities to purchase the lot for \$200,000 in order to ensure the lot is developed to its highest and best use. Purchasing the lot will also relieve the need for the City to pay for parking for its employees on the lot in the short to medium term.

Staff requests approval.

INTERNAL USE ONLY: Project Code: _____;

Total Amount new/change (inc/dec) in budget: _____; Break down:

Costs: Engineering 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? Y/N

Is this item ready to encumber now? ____ Existing PO# _____ Inc/Dec \$ _____

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (“Agreement”) is made by and between Mary Coyne Investments LLC, 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 Parcel ID 018-3008-0251 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. Seller desires 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. OFFER AND ACCEPTANCE

A copy of this Agreement, signed by Seller, constitutes Seller’s offer to sell the Property and once signed by Buyer, constitutes Buyer’s offer to purchase the Property on the terms stated in this Agreement. A copy signed by Buyer shall be delivered to the Seller, in care of the following representative (“Seller’s Representative”):

Terry Coyne
1300 E. 9th Street #105
Cleveland, OH 44114

Seller shall return a signed copy of this Agreement to the following representative (“Buyer’s Representative”):

Joseph R. Molnar, Property Development Manager
Department of Community Investment
227 W. Jefferson Blvd., Suite 1400 S.
South Bend, IN 46601

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 Two Hundred Thousand Dollars (\$200,000.00) (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, however, that (i) prior to any such entry, Buyer shall deliver to Seller evidence that Buyer maintains insurance policies, including, without limitation, commercial general liability insurance coverage in the amount of \$1 million per occurrence; and \$2 million aggregate and automotive liability insurance coverage in the amount of \$1 million per occurrence, or otherwise reasonably acceptable to Seller; (ii) Buyer may not take any action upon the Property which reduces the value thereof; and (iii) 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 sixty (60) 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 that will survive the Closing or otherwise be binding upon Buyer (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

Buyer shall obtain the Title Commitment for an owner's policy of title insurance issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company") within twenty (20) days after 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 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, Buyer shall be responsible for the title search charges, the cost of the Title Commitment and owner's policy. Within thirty (30) days after Buyer's receipt of the Title Commitment, Buyer shall give Seller written notice of any objections to the Title Commitment. Within thirty (30) days after Buyer's receipt of the Survey, Buyer shall give Seller written notice of any objections to the Survey. Any exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a "Permitted Encumbrance." If the Seller is unable or unwilling to correct the Buyer's title and survey objections within the Due Diligence Period, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Due Diligence Period. If Buyer fails to so terminate this Agreement, then such objections shall constitute "Permitted Encumbrances" as of the expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to such title and survey objections.

6. SELLERS' 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 written notifications from any local, state, or federal authority regarding environmental matters pertaining to the Property received by Seller within the last two (2) years. Seller shall provide Buyer a copy of all known environmental inspection reports, engineering, title, and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller's Representative.

7. CLOSING

A. Timing of Closing. Unless this Agreement is earlier terminated, 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 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 and any transfer 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 shall be responsible for all taxes related to the Property accruing through the Closing Date, if any, even if such taxes are not yet due and payable. Buyer, or Buyer’s successors and assigns, shall be liable for all real property taxes accruing against the Property after the Closing Date, if any.

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. INTERPRETATION; APPLICABLE LAW; JURISDICTION

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 be presumptively resolved, against either Party. 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 in care of Seller’s Representative, 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. 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 thirty (30) 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 thirty (30) days, the defaulting Party will diligently pursue and prosecute to completion an appropriate cure within a reasonable time. In the event of a default or breach that remains uncured for longer than the period stated in the foregoing sentence, 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. Notwithstanding the foregoing, in the event of a default on behalf of Buyer is related to Buyer's failure or refusal to perform Buyer's obligation to purchase the Property in breach of this Agreement, Buyer shall be permitted three (3) business days (and not thirty (30) days) after the date that Seller provides Buyer with notice of such Buyer default to cure the same.

14. 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 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.

15. INDEMNITY

The Parties agree to reimburse each other for any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense and settlement), which either party may subsequently incur, become responsible for, or pay out as a result of a breach by the other party in default of this Agreement. In the event of legal action initiated by a third party as a result of a breach of this Agreement, the breaching party shall assume the defense of the non-breaching party, including all costs associated therewith.

16. 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.

17. 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.

18. 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.

19. TIME

Time is of the essence of this Agreement.

20. 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.

21. 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. Facsimile signatures will be regarded as original signatures.

22. AUTHORITY TO EXECUTE; EXISTENCE

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. Further, the undersigned representative of Seller represents and warrants that Seller is duly organized, validly existing, and in good standing under the laws of the State of Ohio.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the _____ day of November 2023.

BUYER:

South Bend Redevelopment
Commission

By:

Marcia I. Jones, President

ATTEST:

By:

Vivian Sallie, Secretary

SELLER:

Mary Coyne Investments LLC

By: *Terry Coyne*

Name: Terry Coyne

Title: Member

EXHIBIT A

Description of Property

Commonly Known: 18 VAC LOT COR LAFAY-WAYNE

Parcel ID: 018-3008-0251

State ID: 71-08-12-160-001.000-026

Legal Description: Lots 281 & 282 & W 1/2 Vac Alley E & Adj O P South

Bend Sec 12-37-2E 10/11 Vac Ord 9933-09 9-18-09

EXHIBIT B

Form of Deed

AUDITOR'S RECORD

TRANSFER NO. _____

TAXING UNIT _____

DATE _____

KEY NO. 018-3008-0251

DEED

THIS INDENTURE WITNESSETH, that Mary Coyne Investments LLC (the "Grantor")

CONVEYS AND SPECIALLY WARRANTS, grants, bargains, sells and releases unto the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400S County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana 46601 (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"):

Commonly Known: 18 VAC LOT COR LAFAY-WAYNE

Parcel ID: 018-3008-0251

State ID: 71-08-12-160-001.000-026

Legal Description: Lots 281 & 282 & W 1/2 Vac Alley E &
Adj O P South Bend Sec 12-37-2E 10/11 Vac Ord 9933-09 9-18-09

The Grantor hereby conveys the Property to the Grantee and its successors and assigns, forever, subject to (i) real property taxes and assessments both general and special, which are a lien but not yet due and payable; (ii) all right of ways, easements, covenants, conditions, restrictions, and other matters of record; (iii) all matters that could be disclosed by a current and accurate survey of the Property; (iv) rights of way for roads; and (v) all applicable building codes and zoning ordinances.

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.

Signature Page Follows

GRANTOR:

MARY COYNE INVESTMENTS LLC

By: _____
Dennis Coyne, Member

STATE OF OHIO)
) SS:
CUYAHOGA COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Dennis Coyne, Member of MARY COYNE INVESTMENTS, LLC, and acknowledged the execution of the foregoing 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 _____, 2023.

My Commission Expires:

Notary Public

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. /s/ Danielle Campbell Weiss

This instrument was prepared by Danielle Campbell Weiss, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.