

YOUNG'S CREEK GREENWAY TRAIL PROJECT

PURCHASE AGREEMENT

By and Between

**Redevelopment Commission
of the City of Franklin, Indiana**

and the

**Vitula Hughes Whitworth Trust
Under Trust Agreement Dated November 1, 2014**

180 South Jackson Street, Franklin, Indiana

This Purchase Agreement (the "Agreement") dated March 5, 2019 by and between the Redevelopment Commission of the City of Franklin, Indiana ("RDC"), as the governing body of the City of Franklin, Indiana Redevelopment District ("District"), and the Vitula Hughes Whitworth Trust, by John R. Hughes as Trustee under a certain Trust Agreement dated November 1, 2014, as amended ("Seller" or "Sellers"). (Collectively, the RDC and the Sellers are the "Parties").

RECITALS

WHEREAS, the RDC serves as governing body of the District, pursuant to Indiana Code 36-7-14 et seq., as amended (the "Act"), desires to foster economic development and redevelopment within the City, and has determined that a vital component of the long-term viability of the historic downtown is the preservation and appropriate redevelopment of the area commonly known as the Young's Creek Greenway, an area running along both sides of Young's Creek through downtown Franklin, Indiana. The preservation and appropriate redevelopment of this area, for purposes of this Agreement, is the "Project".

WHEREAS, the RDC desires to purchase and the Sellers desire to sell certain real property and improvements ("Property") commonly referred to as follows, all of which is located within the: 180 South Jackson Street, Franklin, Indiana, comprised of one (1) parcel, identified further as follows: parcel identification number 41-08-14-034-121.000-009, and approximately thirty-one hundredths (.31) acres, described on the attached Exhibit A.

WHEREAS, by entering into this Agreement the Parties specify the terms, process, and timing for a closing of the purchase of the Property,

NOW THEREFORE, in consideration of the terms and conditions contained in this Agreement, the RDC and Sellers agree as follows:

1. **Due Diligence.** The RDC has a Due Diligence Period to examine the Property and determine whether to proceed to Closing. The Due Diligence Period is forty-five (45) days from the date of this Agreement, and may be extended by agreement of the Parties. During the Due Diligence Period, the RDC may investigate the condition of the Property, and the Seller will cooperate with same. If the RDC concludes prior to the end of the Due Diligence Period to terminate this Agreement, it may do so and neither Party will have further obligations under this Agreement. If the RDC determines to proceed to Closing, a Closing will be scheduled as soon as practicable following the end of the Due Diligence Period or earlier, and the RDC will purchase the Property at Closing from the Seller for the sum of Two Hundred Thousand Dollars (\$200,000.00), payable in cash at closing.
2. **Seller's Representations, Warranties and Covenants.** In order to induce RDC to enter into this Agreement and to purchase the Property, in addition to warranties, representations and covenants contained elsewhere in this Agreement, Seller hereby makes the following representations, warranties and covenants, each of which is material and is relied upon by the RDC:
 - (a) **Title to Property.** To the best of Seller's knowledge, Seller is the sole owner of good, marketable and insurable fee simple title to all of the Property. Seller shall neither cause nor permit any additional encumbrances on title to the Property between the Date of this Agreement and Closing. Seller shall not sell or otherwise transfer any part of the Property without RDC's prior written consent. Seller shall provide at or before Closing a Vendor's Affidavit in customary form and sufficient to bring the Seller's representations and warranties current to Closing.
 - (b) **Authority of Seller.** Seller has the right, power and authority to enter into this Agreement and to sell the Property in accordance with the terms and conditions hereof. This Agreement, and all of the documents executed by Seller which are to be delivered to RDC at the Closing, when executed and delivered by Seller, will be valid and binding obligations of Seller in accordance with their respective terms, and do not and will not violate any provisions of any agreement to which Seller is a party or to which it is subject.
 - (c) **No Bankruptcy.** Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, or (iv) suffered the attachment or other judicial seizure of all or substantially all of Seller's assets.
 - (d) **Non-Foreign Person.** Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and any related regulations.
 - (e) **Options.** No options or other contracts have been granted or entered into which are still outstanding and which give any other party a right to purchase or lease any interest in the Property or any part thereof.
 - (f) **Lease.** No leases or license agreements are in effect with respect to the Property, and no persons have any rights to possess the Property other than the Seller, with the exception of the following: a lease of the Property to Franklin Auction.

- (g) Status of Activities. The parties agree that Seller (or its tenant) may continue its operations and the winding up of same through ("Possession Date"), ten (10) days after the Closing. Seller hereby acknowledges, warrants and represents (a) that any and all business (if any) currently being operated on the Property by the Seller and/or others shall cease operation prior to the Possession Date, (b) Seller shall vacate the Property before the Possession Date, (c) all Personal Property will be removed prior to the Possession Date, and any Personal Property not removed prior to the Possession Date shall become the Personal Property of RDC, and (d) Seller shall cooperate with RDC in the transferring of any utilities and/or the disconnection of utilities (if any) as requested by RDC. From the date of Closing to the Possession Date, Seller's possession of the Property is solely at Seller's risk, Seller agrees to indemnify, defend, and protect the RDC against any claims and liabilities that relate indirectly or directly to such possession, and agrees to name the RDC as an additional insured for purposes of insurance coverage, provided seller's insurer will provide such insurance coverage without additional premium.
- (h) Contracts. To Seller's knowledge, there are no service contracts, maintenance contracts, management contracts, construction contracts, parking contracts, license agreements or similar agreements which relate to the Property (collectively "Contracts"). Seller shall not modify, amend, or supplement any existing Contracts or enter into any new Contracts that extend after Closing without the prior written consent of RDC.
- (i) Insurance. Risk of casualty loss or damage to the Property shall remain with Seller until possession to the Property is delivered to the RDC after the Closing and Seller shall maintain in full force current insurance policies. Seller, to the best of Seller's knowledge, has not violated any of the provisions of the existing foregoing insurance policies and all such insurance policies are in full force and effect, and will be so through Closing. In the event of any damage or destruction is not fully repaired prior to Closing, Buyer at its option may terminate this Agreement or elect to close the transaction, in which event all insurance proceeds not already applied to repair of the damage or destruction shall be assigned in writing by Seller to Buyer.
- (j) Maintenance. Seller shall maintain the Property as needed prior to Closing and during its possession post-Closing, including if and to the extent that Seller has any responsibility for maintaining the Property under any other agreement affecting the Property, Seller shall maintain it in conformance therewith through the Closing.
- (k) Proceedings and Roadways. To the Seller's actual knowledge, there are no lawsuits, adverse regulatory actions, condemnation or eminent domain proceedings pending or contemplated against the Property or any part thereof and the Seller has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Property or any part thereof. If there are any roadways upon the Property, the roadways connect to adjacent public streets or to private streets created by valid public or private easements.
- (l) Environmental. Seller has disclosed to the RDC all known conditions of the Property, including the existence of any known hazardous, toxic, environmental waste or other potential environmental liability or risks exists related to the Property. Seller

shall cooperate with RDC in obtaining a third-party environmental assessment, including providing environmental consultants with information as needed.

- (m) Mechanic's Liens and Litigation. No payments for work, materials, or improvements furnished to the Property by Seller or at Seller's direction will be due or owing at Closing and no mechanics lien, material man's lien, or other similar lien shall be of record against the Property at the time of Closing. Seller is not aware of any pending lawsuits, condemnation or eminent domain proceedings with respect to the Property.

The representations and warranties set forth above are true and correct as of the Date of this Agreement and shall be true and correct as of the Closing and shall merge into the deed.

4. RDC's Warranties and Warranties: The following warranties and representations shall be made by RDC at Closing:

- (a) This Agreement, when executed and delivered by RDC will be a valid and binding obligation enforceable in accordance with its terms
- (b) Upon the signing and delivery of this Agreement, this Agreement will be legally binding upon RDC in accordance with all of its provisions.
- (c) The person signing this Agreement on behalf of RDC has been duly authorized to sign and deliver this Agreement on behalf of RDC.
- (d) RDC has no knowledge of any litigation, proceeding or action pending or threatened against or relating to RDC or which questions the validity of this Agreement or any action taken or to be taken by RDC pursuant to this Agreement.

The representations and warranties set forth above by RDC are true and correct as of the Date of this Agreement and shall be true and correct as of the Closing and shall merge into the deed.

5. Closing Costs, Prorations, and Adjustments. Costs and payments related to the purchase and sale of the Property shall be paid at Closing as follows:

- (a) Seller shall satisfy or pay for:
 - i. all mortgage liens, if any, with respect to the Property and all transfer, servicing, or prepayment penalties or fees assessed by the holders of such mortgages;
 - ii. all of Seller's legal fees;
 - iii. the pro-rated real estate taxes described in paragraph 6 below.
- (b) RDC shall pay for:
 - i. the title insurance premiums due in connection with the issuance of RDC's owner's insurance policy in the amount of the Purchase Price;
 - ii. all of RDC's legal fees;

- iii. the recording cost of the deed conveying title to the Property to RDC;
- iv. the fees and costs of Closing Agent.

6. Prorations. Real estate taxes shall be prorated as of the date of the Closing. RDC shall receive at Closing a credit for taxes relating to time periods prior to Closing. All prorations required under this Agreement shall be computed as of the date of Closing (and RDC shall be deemed to be in title to the Property for the entire day on such date for purposes of this calculation). In such proration, Seller shall pay all of such taxes for the year 2018 and the prorated sum computed on a daily basis for 2019 prior to date of closing; and RDC shall pay and assume all later property tax on the real estate. The 2019 property tax shall be computed based on the 2018 property tax, and no adjustment shall be made after closing for the actual property taxes when they are payable.

7. Conditions to RDC's Obligations. RDC's obligation to consummate the purchase and sale transaction contemplated by this Agreement is subject to the satisfaction or waiver of the following conditions ("RDC's Conditions Precedent"):

- (a) **Title Policy.** The title company shall have unconditionally committed to issue, at the Closing, an ALTA Owner's Extended Coverage Policy of Title Insurance, insuring the RDC's interest in the Land and Improvements with liability in the amount of the Purchase Price subject only to the Permitted Exceptions ("Title Policy").
- (b) **No Breaches.** Seller shall not have materially breached any of Seller's obligations set forth in this Agreement.
- (c) **Accuracy of Representations and Warranties.** Seller's representations and warranties shall be true and correct as of the Closing. Seller shall provide a Vendor's Affidavit acceptable to Buyer and its title company. Seller shall at Closing certify that other than as expressly agreed in writing by Seller and RDC, no lease or other property interest has been granted to any person.
- (d) **Contracts.** Seller shall provide evidence of the termination of any Contracts (if any) RDC has requested to be terminated.
- (e) **Due Diligence.** RDC shall have completed its due diligence analysis and elected to proceed to Closing.

8. Seller's Deliveries. In addition to other conditions precedent set forth elsewhere in this Agreement, Seller shall deliver to RDC all of the following documents and items, the delivery and accuracy of which shall be a further condition precedent to RDC's obligations to consummate the purchase and sale herein contemplated:

- (a) **Items Delivered With This Agreement.** If not previously delivered, Seller shall deliver all of the following items currently in the possession or control of Seller as soon as practicable after the full execution of this Agreement. Any subsequent documents within these descriptions of which Seller subsequently possesses or learns of shall be delivered with five (5) business days of such discovery or receipt:

- i. Seller's Owner's Title Insurance Policy, along with a copy of all recorded documents referenced as exceptions in the Policy in Seller's possession;
 - ii. Existing Survey(s) and improvement location reports for the Real Estate;
 - iii. Copies of all Contracts servicing the Property;
 - iv. Copies of all warranties related to the Property or its maintenance;
 - v. Documents concerning any pending or threatened litigation, eminent domain, or governmental regulatory actions related to the Property;
 - vi. All soil boring tests, asbestos removal reports, environmental studies, reports, and permits with respect to the Real Estate, including Phase 1 and 2 environmental reports and any and all records relating to environmental contamination and/or remediation at the site;
 - vii. An accounting of any and all charges incurred or charged, of which Seller has notice will be charged, with regard to the Property (including but not limited to common area, utility, or maintenance charges, easement charges, business taxes, business license fees, detention facility maintenance fees, or any other fees and charges whatsoever).
- b. Seller shall deliver the following items to Closing Agent prior to the Closing:
- i. A Trustee's Deed to be signed and delivered at closing by Seller and acknowledged by a notary conveying title to the Land, Appurtenant Rights and Improvements subject only to encumbrances permitted by this Agreement ("Deed") with the legal description from RDC's survey;
 - ii. Vendor's affidavit, in customary form and evidence of authority and capacity to execute the deeds and documents;
 - iii. "Payoff" letters from the holders of all liens to be satisfied under the terms of this Agreement, if any;
 - iv. One (1) original FIRPTA affidavit (along with one (1) original of any state or local equivalent affidavit) each executed by Seller (together "FIRPTA");
 - v. Seller's approval of a closing statement for this transaction by seller or its attorney;

- vi. Any other documents, instruments or agreements reasonably necessary to effectuate the transaction contemplated by this Agreement.

8. **RDC's Deliveries at Closing.** On or before the day of Closing, RDC shall deliver the following to Closing Agent: The Purchase Price (as adjusted pursuant to the Closing Statement and this Agreement), and any and all other documents reasonably required to be executed by RDC to consummate this transaction.

9. **Closing Agent.** RDC will select a title company issuing the title insurance to act as the Closing Agent (the "Closing Agent") with respect to the transaction contemplated by this Closing Agreement. RDC shall deposit a duplicate original of this Agreement with Closing Agent. This Agreement, together with such further instructions, if any, as the parties shall provide to Closing Agent by written agreement shall constitute the title closing escrow instructions. If any requirements relating to the duties or obligations of Closing Agent hereunder are not acceptable to Closing Agent, or if Closing Agent requires additional instructions, the parties agree to make such deletions, substitutions and additions hereto as counsel for RDC and Seller shall mutually approve, which additional instructions shall not substantially alter the terms of this Agreement unless otherwise expressly agreed to by Seller and RDC.

11. **Disbursements and Other Actions by Closing Agent.** Upon the Closing, Closing Agent shall promptly undertake all of the following:

- i. **Recordation of Deeds.** Cause the Deed and any other documents which the parties hereto may mutually direct to be recorded in the Official Records of Johnson County and obtain conformed copies thereof for distribution to RDC and Seller.
- ii. **Calculation and Disbursement.** Disburse all funds deposited with Closing Agent by RDC.
- iii. **Title Policy.** Direct the title company to issue the Title Policy to RDC.
- iv. **Deliveries to Seller.** Deliver to Seller a conformed copy of the recorded Deed and other pertinent documents.
- v. **Deliveries to RDC.** Deliver to RDC: one (1) original Bill of Sale; one (1) original Lease, License and Contract Assignment (if applicable); the original FIRPTA; a conformed copy of the recorded Deed, and other pertinent documents.

12. **Real Estate Commission.** Seller and RDC represent and warrant to each other that no brokerage fees or real estate commissions are or shall be due or owing by the RDC in connection with this transaction or in any way with respect to the Property except as set forth in this section.. Each party agrees to defend, indemnify, and hold the other party harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees, except that seller has engaged Smythe & Co. as its realtor, to whom a commission is payable at closing.

13. **Exchange Cooperation Clause.** Notwithstanding anything to the contrary, Buyer hereby acknowledges that it may be the intent of the Seller to affect an IRC Sec. 1031 tax deferred

exchange, which will not delay the closing or cause additional expense to Buyer. Seller's rights under this agreement may be assigned to a Qualified Intermediary for the purpose of completing such an exchange. Buyer agrees to cooperate with Seller and its selected Qualified Intermediary in a manner necessary to complete the exchange.

14. Closing and Signing Dates. This agreement must be signed by both parties before March 22, 2019, otherwise it will be void. Further, the agreement shall terminate without further liability of the closing if it does not occur on or before May 1, 2019.

15. As a material part of this purchase consideration for this Property, RDC takes the Property subject to any environmental matters, defects or conditions which may be in or on the Property now or hereafter. RDC covenants and agrees not to sue or bring any action by administrative proceedings or court proceedings after the closing of this transaction, against Seller, its officers, or directors in any manner whatsoever, for any environmental defect or condition in or on the Property; and RDC releases Seller, its officers, directors and successors from any liability for such environmental defect. The obligation hereunder shall survive the closing by delivery of deed; and shall inure and be binding upon the assigns and successors in interest of the parties. To the contrary notwithstanding anything contained, RDC may decline to complete this transaction and terminate his liability prior to closing in the event that RDC reasonably determines that there is an environmental condition or defect in or on the Property provided this right of RDC shall terminate when the deed for the Property is conveyed to RDC at closing.

16. That RDC shall provide to Seller at closing a copy of RDC's environmental report or assessment which it obtained for the Property.**SELLER**

Signed March ____, 2019.

**VITULA HUGHES WHITWORTH
TRUST u/t/a November 1, 2014**

By: _____
John R. Hughes, Trustee

BUYER

Signed March ____, 2019.

**CITY OF FRANKLIN, BY AND THROUGH THE
FRANKLIN REDEVELOPMENT COMMISSION**

By: _____
Robert D. Heuchan, President

By: _____
Brian J. Deppe, Secretary