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2 **BILL NO. R-13-01-20**

3 **RESOLUTION NO. R-10-13**

4 **A RESOLUTION APPROVING THE SALE OF CERTAIN**
5 **REAL ESTATE FOR THE CITY OF FORT WAYNE, INDIANA**

6 **WHEREAS**, the City of Fort Wayne desires to sell certain real property
7 commonly known as approximately 8.275 acres, more or less, near the
8 iniersection of Lima Road and Progress Road in Fort Wayne, Indiana, and
9 specifically described on **Exhibit A**, attached hereto and incorporated and made a
10 part hereof (the "Real Property"); and
11

12 **WHEREAS**, the Real Property was purchased along with other real estate
13 in order to construct an regional detention pond, and the Real Property is not
14 necessary for the regional detention pond; and

15 **WHEREAS**, City Utilities of the City of Fort Wayne has entered into a
16 Purchase Agreement for the sale of the real estate with Dealership Holdings, LLC
17 for the sum of \$1,250,000.00, a copy of which is attached hereto and incorporated
18 herein by reference (the "Purchase Agreement"); and
19

20 **WHEREAS**, the Real Property which is the subject of this Purchase
21 Agreement has no public road or access, and the Purchaser has agreed to construct
22 a new public road at its expense (with tax incremental financing reimbursement
23 approved by the Fort Wayne Redevelopment Commission) to be known as Value
24 Drive, which road is necessary and critical not only for the Purchaser's intended
25 development of the Real Property as a new Chevrolet dealership, but also for the
26 intended development of adjacent Real Property by Costco Wholesale Corp.; and
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28 **NOW, THEREFORE**, be it resolved by the Common Council of the City
29 of Fort Wayne:
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SECTION 1. The sale of the Real Property located near Lima and Progress Roads in Fort Wayne, Indiana to Dealership Holdings, LLC pursuant to the Purchase Agreement is hereby approved and agreed to.

SECTION 2. This Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.


Council Member

APPROVED AS TO FORM AN LEGALITY


Carol Helton, City Attorney

Public Hearing Date, if applicable

Read the first time in full and on motion by Councilman *Glynn Hines*
Read the second time by title and referred to the *Regulations Committee*
Committee. Read the third time in full and on motion by Councilman
Hines, placed on passage by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	9			
BENDER	✓			
CRAWFORD	✓			
DIDIER	✓			
HARPER	✓			
HINES	✓			
JEHL	✓			
PADDOCK	✓			
SHOAFF	✓			
SMITH	✓			

DATED:

2-12-13

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
~~(ANNEXATION)~~ (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE
(RESOLUTION) NO. *R-10-13* on the _____ day of _____
, 2013

Sandra E. Kennedy
SANDRA E. KENNEDY,
CITY CLERK

ATTEST:

Thomas F. Didier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the *13th* day
of *February*, 2013, at the hour of *8.30* o'clock *A.M.* E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this *13th* day of *FEBRUARY*

2013, at the hour of *8.30* o'clock *A.M.* E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR

EXHIBIT "A"

A part of the Northeast Quarter of Section 22, Township 31 North, Range 12 East, in Allen County, Indiana, and being a part of the parcel described in Document #206062980 in the Allen County Recorder's Office, described as:

Commence at an iron pin found at the Northeast corner of the Plat of Interstate Industrial Park, Section "D" as recorded in Plat Book 30, page 1, in the Office of the Recorder of said Allen County, thence South 87 degrees 15 minutes West (North 90 degrees 00 minutes West plat) along the North line of said Section "D", a distance of 52.9 feet to the Easternmost corner of Interstate Industrial Park, Section "I" as recorded in Plat Book 32, page 146, as situated in the centerline of the Spy Run Creek; thence Northwesterly along the Easterly lines of said Section "I" and the centerline of the Spy Run Creek as follows:

thence North 50 degrees 03 minutes West, a distance of 162.7 feet;
thence North 43 degrees 21 minutes West, a distance of 93.1 feet;
thence North 32 degrees 05 minutes West, a distance of 91.7 feet;
thence North 51 degrees 49 minutes West, a distance of 89.7 feet;
thence North 62 degrees 13 minutes West, a distance of 103.1 feet;
thence North 69 degrees 51 minutes West, a distance of 123.9 feet;

thence North 60 degrees 15 minutes West, a distance of 33.3 feet to the North line of the South One-half of the Northwest Quarter of said Section 22, being also the Northeast corner of said Section "I" and the Southeast corner of a 0.560 acre tract of land as recorded in Document #72-7276; thence continuing Northwesterly along the centerline of said Spy Run Creek, North 38 degrees 01 minute West, a distance of 42.7 feet to the South 125 foot limited access right-of-way line of said Interstate Highway No. 69; thence North 87 degrees 15 minutes 18 seconds East, along said right-of-way line a distance of 813.07 feet to an iron pin found at Plan Station 508+00 of Indiana State Highway Commission Plans dated 1958, Project Number 1-69-4(3)109; thence continue along said Highway right-of-way North 85 degrees 59 minutes 01 second East a distance of 122.06 to the Point of Beginning; thence continue North 85 degrees 59 minutes 01 second East a distance of 39.41 feet to an iron pin found, as situated 121.0 feet South of the centerline of said Highway; thence along the right-of-way of Interstate Highway No. 69 Interchange, Easterly and Southeasterly along a circular curve to the right of radius 661.3 feet, an arc distance of 345.97 feet, said arc subtended by a chord bearing South 75 degrees 47 minutes 34 seconds East and a chord distance of 342.04 feet to a iron pin found at the point of tangency, as situated 55 feet radially distant Southwestward of line "SWC" on said highway plans; thence continuing along said Highway right-of-way, South 60 degrees 48 minutes 44 seconds East, a distance of 556.19 feet to an iron pin found; thence departing from said right-of-way South 28 degrees 55 minutes 46 seconds West, a distance of 489.10 feet on the north line of the parcel described in Document #201034359; thence North 42 degrees 42 minutes 30 seconds West a distance of 152.49 feet; thence North 58 degrees 24 minutes 16 seconds West a distance of 464.15 feet; thence North 76 degrees 45 minutes 59 seconds West a distance of 117.21 feet; thence North 01 degree 00 minutes 11 seconds West a distance of 398.48 feet to the point of beginning, containing 8.275 acres, more or less.

SUBJECT TO the reservation of an easement in favor of the City of Fort Wayne to access a certain detention pond and real estate owned by the City of Fort Wayne upon and over the Southwesterly and Westerly lines of the aforescribed tract, more particularly described as follows, to-wit:

Commence at the Point of Beginning of the 8.275 acres hereinbefore described; thence North 85 degrees 59 minutes 01 seconds East along the North line of said 8.275 Acres, a distance of 15.02 feet; thence South 1 degree 00 minutes 11 seconds East, parallel with and 15 feet normally distant East of the West line of said parcel, a distance of 387.60 feet; thence south 76 degrees 45 minutes 59 seconds East, parallel with and 15 feet normally distant Northeasterly of the Southwesterly line of said parcel, a distance of 107.96 feet; thence South 58 degrees 24 minutes 16 seconds East, and continuing parallel with and 15 feet normally distant Northeasterly of said Southwesterly line, a distance of 468.54 feet; thence South 42 degrees 42 minutes 30 seconds East and continuing parallel with and 15 feet normally distant of said Southwesterly line, a distance of 70.81 feet to the Westerly line of Value Drive; thence Southerly along the line aforesaid along a circular curve to the left having a radius of 75.00 feet, a distance of 23.82 feet, the chord of which bears South 3 degrees 28 minutes 22 seconds East, 23.72 feet, to the Southwesterly line of said 8.275 Acres; thence North 42 degrees 42 minutes 30 seconds West along the line aforesaid, a distance of 87.11 feet; thence North 58 degrees 24 minutes 16 seconds West and continuing along said Southwesterly line, a distance of 464.15 feet; thence North 76 degrees 45 minutes 59 seconds West and continuing along said Southwesterly line, a distance of 107.97 feet to the Southwest corner of said 8.275 Acres; thence North 1 degree 00 minutes 11 seconds West along the West line of said parcel, a distance of 398.48 feet to the point of beginning.

Listing Broker (Co.) NA

By

Selling Broker (Co.) NA

By

PURCHASE AGREEMENT
COMMERCIAL-INDUSTRIAL REAL ESTATE

A. **PARTIES:** City Utilities of the City of Fort Wayne ("Seller") agrees to sell and convey to Dealership Holdings, LLC or its assigns ("Buyer") and Buyer agrees to buy from Seller the following property for the consideration and subject to the following:

B. **PROPERTY:** The property is commonly known as approximately 8.31 acres as shown on Exhibit A in Washington Township, Allen County, Fort Wayne, Indiana, including all buildings and permanent improvements and fixtures attached owned by Seller; all privileges, easements and appurtenances pertaining thereto including any right, title and interest of Seller in and to adjacent streets, alleys, rights-of-way, leases, rents, security deposits, licenses and permits with respect to the property, trade name, and warranties or guarantees relating to the property being sold, and any personal property specified herein; all of the above referred to as the "Property." The legal description of which is (attached as Exhibit "A") described as follows:
8.31 acres off of Lima Road and Progress Road
subject to exact determination by survey pursuant to Paragraph J.

The following items of personal property are INCLUDED in the sale: NA
other personal
property and the following additional items are EXCLUDED from the sale: NA

C. **PRICE:** The purchase price shall be \$1,250,000.00
Dollars payable (in cash at closing) (in accordance with terms and conditions in this Agreement).

D. **EARNEST MONEY:** Buyer submits \$20,000.00 as Earnest Money to be held by the Seller upon execution of this Agreement by both parties. The Earnest Money shall be applied to the purchase price at closing unless returned to Buyer, released to Seller, or otherwise disbursed in accordance with this Agreement.

In the event the Buyer breaches or defaults in this Agreement and fails to complete the purchase of the Property if and as required herein, the Earnest Money and any additional Earnest Money shall be retained by the Seller as liquidated damages as the Seller's sole and exclusive remedy. In the event the Buyer fails to complete the purchase due to the failure of the satisfaction to the Buyer of the Due Diligence Items during the initial Due Diligence Period, the Earnest Money shall be refunded to the Buyer and this Agreement shall be null and void.

E. **ADDITIONAL PROVISIONS:** Subject to all City, County and State government approvals. Purchase is contingent upon approval by General Motors for dealership relocation to subject site.

Included in this Agreement are the following addenda: (Place check the appropriate box or boxes)

Financing Addendum Zoning/Governmental Approval Addendum Feasibility Study Addendum
 Apartment or Multi-Tenant Property Addendum Tax Deferred Exchange Addendum Seller Addendum
 Due Diligence, Financing and Tax Incentive per paragraph J Representations & Warranties of

F. **CLOSING:** The closing of the sale shall take place at (the Title Company) within forty-five (45) days after the end of the Due Diligence Period upon no less than 10 days notice from Buyer to Seller, (the "Closing Date") or this Agreement shall terminate unless the Closing Date is changed in writing by Seller and Buyer, or otherwise extended pursuant to this Agreement.

G. **POSSESSION:** The possession of the Property shall be delivered to Buyer, subject to the rights of tenants in possession, if any, in its present condition, ordinary wear and tear excepted, on the Closing Date. Seller shall maintain the Property, including fixtures, equipment and any included personal property, in its present condition until possession is delivered to Buyer.

H. **REAL ESTATE TAXES:** (Check paragraph 1, 1. Current Year (Lien Basis in Arrears) Indiana Customary Proration. The taxes assessed for the current year, due and payable in the year following closing, shall be prorated between Seller and Buyer on a calendar year basis as of the day immediately prior to the Closing Date. All taxes assessed for any prior calendar year and remaining unpaid shall also be paid by Seller.

2. Prior Year (Cash Basis) Proration When Taxes Are Paid: The taxes assessed for the year prior to closing, due and payable during the year of closing, shall be prorated between Seller and Buyer on a calendar year basis as of the day immediately prior to the Closing Date. Buyer shall be responsible for all taxes assessed for the current year due and payable in the year following closing.

3. Installment Basis: Buyer will assume and pay all taxes on the Property beginning with the tax installment due and payable on . 20 . and all taxes due thereafter. Seller shall pay all taxes for the Property due and payable before such tax installment not assumed by Buyer.

For Purposes of 1, 2 and 3 above:

(A) If the tax rate or assessment for taxes assessed or payable in the year of closing has not been determined as of the Closing Date, the assessment or rate shall be assumed to be the same as the most recent assessment or rate.

(B) Taxes which are Seller's responsibility and not yet due as of the Closing Date shall be credited against the purchase price or cash portion thereof payable by Buyer at closing, and Seller shall have no further liability for such taxes.

(C) All taxes due and payable on or prior to the Closing Date shall be paid at or before closing and charged at closing to the responsible party.

(D) Buyer shall have the right to assume control and responsibility of all real estate tax appeals and any rebates, refunds or credits shall be prorated between Seller and Buyer as of the Closing Date

(NOTE: The succeeding year's tax bill for recently constructed buildings or following reassessment periods may greatly exceed the last tax bill available to the closing agent.)

I. **INSURANCE AND RISK OF LOSS:** Seller shall maintain replacement cost (if available) or actual cash value "all risk" insurance on the Property through the Closing Date. Seller's insurance shall be canceled as of the Closing Date and Buyer shall provide its own insurance thereafter. Risk of loss by damage or destruction to the Property prior to the closing shall be borne by Seller. In the event any damage or destruction of 90 % of the cost of all improvements is not fully repaired prior to closing, Buyer, at its option, may either terminate this Agreement or elect to close the transaction, in which event Seller's right to all insurance proceeds not yet applied to repair of the damage or destruction shall be assigned in writing by Seller to Buyer at closing.

J. **CONDITIONS TO CLOSING:** Buyer's obligations under this Agreement are conditioned upon satisfaction of each of the following items which are for the Buyer's benefit and may be waived by Buyer at Buyer's sole discretion within one hundred eighty (180) days from the last acceptance date between Seller and Buyer of this Agreement (the "Due Diligence Period").

1. **Title Commitment:** A commitment for title insurance (the "Commitment") issued by a reputable title insurance company selected or approved by Buyer (the "Title Company") showing marketable title in Seller's name shall be ordered by (Seller) (Buyer) promptly upon acceptance of this Agreement and shall be delivered to Buyer within days after . At Buyer's request, legible copies of all recorded instruments affecting the Property or recited as exceptions in the Commitment shall also be delivered.

2. **Survey:** A survey shall be ordered promptly upon acceptance of this Agreement and shall be furnished at (Sellers) (Buyers) expense within 30 days after acceptance of this agreement . It shall be prepared by a licensed Indiana surveyor selected or approved by Buyer, shall comply with requirements for ALTA surveys, including optional requirements from Table A, shall reflect whether the Property is located in a designated flood zone area and shall be certified to Buyer, the Title Company and Buyer's lender

3. **Title and Survey Approval:** If Buyer has an objection to items disclosed in the Commitment or the survey, Buyer shall make written objections to Seller within 30 days after receipt of both the Commitment and survey. Upon the expiration of such period, any item not objected to by Buyer or subsequently approved by Buyer in writing shall be deemed a permitted exception ("Permitted Exception"). If Buyer makes objections, Seller shall have thirty (30) days from the date the objections are made to cure the same, and the Closing Date shall be extended, if necessary. Seller agrees to utilize its best efforts and reasonable diligence to cure any objections, but only to the extent necessary to convey marketable title. If the objections are not satisfied within the time period, Buyer may either terminate this Agreement and receive a refund of the Earnest Money or waive the unsatisfied objections and close the transaction

4. **Inspections:** (Check paragraph (A) and/or (B) or paragraph (C) below) unless Buyer waives inspections under paragraph (C), Buyer shall have determined that the Property has no unacceptable, adverse environmental or physical condition as provided below.

(A) **Environmental Assessment:** A Phase I environmental site assessment ("Phase I") on the Property shall be ordered by Seller Buyer during the Due Diligence Period Seller (Buyer's) expense from a reputable, qualified engineer, acceptable to Buyer. The Phase I shall be conducted in accordance with current ASTM standards unless otherwise agreed and may also include at Buyer's option the following matters:

(1) an investigation for the presence of asbestos, radon, lead or polychlorinated biphenyls (PCBs) on the Property; and/or

(2) an investigation to determine if the Property is located in any regulated or protected area under the jurisdiction of the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the Indiana Department of Environmental Management, the Indiana Department of Natural Resources, the U.S. Fish and Wildlife Service or any other federal, state or local agency. If Buyer does not make a written objection to any problem(s) revealed in the report within 30 days of receipt of the report, the Property shall be deemed to be acceptable. If Buyer determines that the environmental condition is unsatisfactory, Seller shall have a reasonable period of time, not to exceed 60 days, to remediate the condition to Buyer's satisfaction and the Closing Date shall be extended, if necessary. If Seller fails or refuses to remediate, Buyer may either terminate this Agreement and receive a refund of the Earnest Money or waive its objection and close the transaction.

(B) Physical Inspections: Promptly upon acceptance of this Agreement, all physical inspections shall be ordered at Seller's (Buyer's) expense. Inspections shall be made by qualified inspectors or contractors, selected or approved by Buyer, with written reports delivered to Seller and Buyer. Inspections may include but are not limited to the following: heating, cooling, electrical, plumbing, roof, walls, ceilings, floors, foundation, basement, crawl space, water, storm and waste sewer, well/septic, geotechnical, other.

If Buyer, in its reasonable discretion, believes that an inspection report reveals a major defect in or with the Property, Buyer shall report such defect in writing to Seller within 30 days of receipt of report. If Buyer does not make a written objection to any problem(s) revealed in the report(s) within such time period, the Property shall be deemed acceptable to Buyer. Seller shall have a reasonable period of time, not to exceed 30 days, to repair any such major defect to Buyer's reasonable satisfaction and the Closing Date shall be extended, if necessary. If Seller fails or refuses to repair, Buyer may either terminate this Agreement and receive a refund of the Earnest Money or waive its objection and close the transaction.

(C) The Buyer's obligations to complete the purchase under this Agreement are conditioned upon satisfaction of all items in paragraph J hereof, including the following items (collectively the "Due Diligence Items") which are for the benefit of the Buyer and may be waived by the Buyer at the Buyer's sole discretion:

- (1) Chevrolet Motor Division of General Motors Corporation approval for automotive dealership relocation upon terms and conditions acceptable to Buyer in Buyer's sole discretion;
- (2) All governmental approvals and permits, including by way of illustration and not limitation, zoning, rezoning, development plan approval, site plan approval and storm water approval, all without conditions or restrictions unacceptable to Buyer in Buyer's sole discretion and at a cost to Buyer acceptable to Buyer in Buyer's sole discretion;
- (3) Availability and adequacy of all utilities to the Property, including by way of illustration and not limitation, electricity, natural gas, water, sewage, and storm water at a cost acceptable to Buyer in Buyer's sole discretion;
- (4) Financing to develop the Property for the Buyer's intended use and purposes as a motor vehicle dealership;
- (5) An agreement with the Seller for the use of a portion of the Seller's Regional Detention Basin currently being constructed, said use permitting at least eighty-five percent (85%) of the total Property acreage to be available for development as an impervious surface. The Buyer shall not be required to pay for or contribute for the cost and expense of the construction of the Regional Detention Basin;
- (6) (a) the execution and recordation by Seller and Menard, Inc. ("Menard") of a release terminating the rights of said parties in that certain easement agreement, as amended, originally executed by Seyfert Foods, Inc., as grantor, and Columbia Sussex Corporation, as grantee, dated February 12, 1990, and recorded February 13, 1990, in the Office of the Recorder of Allen County, Indiana as Document No. 90-006036; (b) the assignment by Seller to Buyer of all rights of Seller under paragraph 13 of that certain License Agreement, dated April 6, 2011, among Seller, Menard and Sturges Development Group, LLC to execute and record a new easement agreement for the limited purpose of vehicular and pedestrian access to and from the City Property over and across the remainder of the Menard Property from Progress Road upon terms and in a location acceptable to the City and Menard; (c) the establishment of an agreement between Buyer and Menard upon the location of the easement for the access road and utilities which will be contained in the aforescribed new easement agreement prior to the expiration of the Initial Due Diligence Period, the cost of such road construction and utilities installation to be borne by Buyer and/or Menard and in no event by Seller; and (d) the establishment of an agreement between Buyer and Menard upon the location of the stormwater drainage easement on the Property prior to the expiration of the Initial Due Diligence Period which agreement shall require the prior written consent of Seller. Buyer acknowledges and agrees that the construction of the access road and the connection of the utilities to be installed shall comply with Seller's development standards. Buyer's failure to provide written notice to Seller within the Initial Due Diligence Period of Buyer's failure to reach agreement with Menard on the location of the access and utilities easement and/or the location of the stormwater drainage easement shall be deemed a waiver by Buyer to thereafter assert such matter as a basis for terminating Buyer's obligations under this Agreement; and
- (7) The right to install at Buyer's sole cost and expense underground sanitary sewer and potable water utilities and facilities being brought to the property line of the Property of the size adequate to service the Buyer's intended development of the Property as a motor vehicle dealership.

The Buyer shall have the right to extend the Due Diligence Period for two (2) periods of forty-five (45) days each. In the event the Buyer elects to extend the Due Diligence Period, the Buyer must give written notice to the Seller within fifteen (15) days prior to the expiration of the Due Diligence Period as to the First Extension, and fifteen (15) days prior to the expiration of the First Extension

in order to exercise the Second Extension. In the event the Buyer exercises the First Extension, the Earnest Money (\$20,000.00) shall be retained by the Seller. In the event the Buyer fails to complete the purchase for any reason other than a default or breach of this Agreement by the Seller. In order to exercise the Second Extension, the Buyer shall be required to submit an additional \$10,000.00 which shall be held as additional Earnest Money.

Buyer and its agents shall have the right to enter upon the Property upon reasonable advance notice and make all inspections provided for herein. Buyer shall restore any damage to the Property resulting from the entry of Buyer or its agents and shall indemnify, defend and hold harmless Seller as to any injury to persons or damage to their property resulting from the negligence of Buyer or its agents in conducting their activities on the Property.

- K. PRORATIONS AND SPECIAL ASSESSMENTS:** Interest on any debt assumed or taken subject to, any rents, all other income and ordinary operating expenses of the Property, including but not limited to, public utility charges, shall be prorated as of the day prior to the Closing Date. Any special assessments applicable to the Property for municipal improvements made to benefit the Property prior to the date of acceptance of this Agreement shall be paid by Seller at or before closing. At closing, Buyer will assume and agree to pay all special assessments for municipal improvements which are completed after acceptance of this Agreement.
- L. SALES EXPENSES:** All sales expenses are to be paid in cash prior to or at the closing.
1. Seller's Expenses: Seller shall pay all costs of releasing existing loans and recording the releases, one-half (1/2) of any closing fee, preparation of Deed and Vendor's Affidavit.
 2. Buyer's Expenses: Buyer shall pay all expenses incident to any new or assumed loan, one-half (1/2) of any closing fee, and expenses stipulated to be paid by Buyer under other provisions of this Agreement.
- M. DEFAULT:** If Buyer breaches this Agreement, Seller may seek any remedy provided by law or equity, or terminate this Agreement and receive the Earnest Money as liquidated damages. If Seller breaches this Agreement, Buyer may terminate this Agreement and receive a refund of the Earnest Money, or Buyer may seek specific performance or any other remedy provided by law or equity.
- N. DUTIES OF BUYER AND SELLER AT CLOSING:**
1. At the closing, Seller shall deliver to Buyer, at Seller's sole cost and expense, the following:
 - (A) A duly executed and acknowledged Warranty Deed conveying marketable title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, reservations and restrictions, except Permitted Exception(s);
 - (B) An Owner's Policy of Title Insurance (the "Title Policy") issued by the Title Company in the amount of the purchase price, dated as of closing, insuring Buyer's fee simple title to the Property to be marketable subject only to the Permitted Exception(s), and deleting the standard printed exceptions contained in the usual form of the Title Policy;
 - (C) An executed Vendor's Affidavit in form acceptable to the Title Company;
 - (D) A Bill of Sale, duly executed by Seller, containing warranties of title, conveying title, free and clear of all liens, to any personal property specified in Paragraph B;
 - (E) An assignment, duly executed by Seller, of leases, prepaid rents, security deposits, and trade name, and to the extent assignable, licenses and permits, warranties or guarantees, and to the extent agreed to be assumed by Buyer, all service, maintenance, management or other contracts relating to the ownership or operation of the Property. Such assignment shall include an indemnity from Seller in favor of Buyer with respect to all claims and obligations arising under such leases and contracts prior to the Closing Date. If Buyer does not agree to assume any such contract, then Seller shall deliver evidence of termination of such contract at closing and shall indemnify Buyer as to all claims and obligations thereunder;
 - (F) A current rent roll duly certified by Seller and any security or tenant deposits, if applicable;
 - (G) Provide evidence of its capacity and authority for the closing of this transaction;
 - (H) Certification establishing that no federal income tax is required to be withheld under the Foreign Investment and Real Property Tax Act, or consent to withhold tax from the proceeds of sale as required, unless it is established that the transaction is exempt;
 - (I) All other executed documents necessary to close this transaction.
 2. At the closing, Buyer shall perform, at Buyer's sole cost and expense, the following:
 - (A) Pay the cash portion of the purchase price in the form of a cashier's check or other immediately available funds;
 - (B) Execute any note(s) and mortgage(s) and cause the funds to be made available to the closing agent for disbursement;
 - (C) Provide evidence of its capacity and authority for the closing of this transaction;
 - (D) Provide to Buyer's lender any title policy as required by the holder(s) of the mortgage(s);
 - (E) An assumption agreement by Buyer (which may be included in Seller's assignment pursuant to Paragraph N.1(E) above) with respect to leases assigned to Buyer and contracts, if any, which Buyer has agreed to assume. Such assumption agreement shall include an

Indemnity from Buyer in favor of Seller as to claims and obligations arising under such leases and contracts assumed by Buyer from and after the Closing Date;

(F) Execute all other documents necessary to close this transaction.

O. **CONDEMNATION:** Seller shall promptly notify Buyer in writing of the commencement of any condemnation proceedings against any portion of the Property. If such condemnation proceedings are commenced, Buyer, at its option, may (1) terminate this Agreement by written notice to Seller within ___ days after Buyer is advised of the commencement of condemnation proceedings, or (2) appear and defend in any condemnation proceedings, and any award shall, at Buyer's election, (a) become the property of Seller and reduce the purchase price by the same amount or (b) shall become the property of Buyer and the purchase price shall not be reduced.

P. **RESPONSIBLE PROPERTY TRANSFER LAW:**

1. Seller is not required to provide Buyer with a Disclosure Statement pursuant to I.C. Section 13-25-3-1 et seq., Indiana's Responsible Property Transfer Law ("IRPTL"), because, to the best of Seller's knowledge, the Property is exempt from the provisions of the law or (a) the Property does not contain any hazardous chemical or material which must be disclosed under the federal Emergency Planning and Community Right-to-Know Act of 1986; (b) the Property does not contain any underground storage tanks which are or have been utilized to hold petroleum or other regulated substances; and (c) the Property is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System.

2. If Seller learns that the Property comes within the terms of IRPTL after execution of this Agreement, then Seller shall provide to Buyer the required disclosure document and comply with all other parts of this law.

Q. **MISCELLANEOUS:**

1. Any notice required or permitted to be delivered shall be deemed received when personally delivered or when confirmed as received by facsimile (with a copy sent by United States mail), express courier or United States mail (postage prepaid, certified and return receipt requested) addressed to Seller or Buyer or their designee at the address set forth below the signature of each party.

2. This Agreement shall be construed in accordance with the laws of the State of Indiana.

3. Time is of the essence. Time periods specified in this Agreement and any addenda are calendar days and shall expire at midnight of the date stated unless the parties agree otherwise in writing.

4. This Agreement is binding upon and for the benefit of the parties' respective heirs, administrators, executors, legal representatives, successors, and assigns. No assignment of this Agreement shall release a party from liability for its obligations hereunder.

5. If any provision contained in this Agreement is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision.

6. This Agreement constitutes the entire agreement of the parties and cannot be changed except by their written consent.

7. By signing below, the parties to this transaction acknowledge receipt of a copy of this Agreement and give their permission to a Multiple Listing Service or other advertising media, if any, to publish information regarding this transaction.

8. Broker(s) may refer Buyer or Seller to other professionals, service providers or product vendors, including lenders, loan brokers, title insurers, escrow companies, inspectors, surveyors, engineers, consultants, environmental inspectors and contractors. Broker(s) has no responsibility for the performance of any service provider and/or inspector. Buyer and Seller are free to select providers/inspectors other than those referred or recommended to them by Broker(s).

9. Buyer discloses to Seller that Buyer is licensed and holds License # NA
Seller discloses to Buyer that Seller is licensed and holds License # NA

10. Where the word "Broker" appears, it shall mean "Licensee" as provided in I.C. 25-34.1-10-6.8.

11. Any party who is the prevailing party against any other party in any legal or equitable proceeding relating to this Agreement shall be entitled to recover court costs and reasonable attorney fees from the non-prevailing party.

12. The parties agree that this Agreement may be transmitted between them electronically or digitally. The parties intend that faxed signatures constitute original signatures and are binding on the parties. The original document shall be promptly executed and/or delivered, if requested. This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Each person executing this Agreement on behalf of a party represents and warrants that he or she has been authorized by all necessary action to execute and deliver this Agreement on behalf of such party.

R. **CONSULT YOUR ADVISORS:** Buyer and Seller acknowledge they have been advised that, prior to signing this document, they should seek the advice of an attorney for the legal or tax consequences of this document and the transaction to which it relates. In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, environmental engineer, or other person, with experience in evaluating the condition of the property, including the possible presence of asbestos, hazardous and/or toxic materials and underground storage tanks.

- S. **CONFIRMATION OF AGENCY RELATIONSHIPS:** Buyer and Seller acknowledge that each has received agency office policy disclosures, had agency explained and now confirm their agency relationships. Buyer and Seller further acknowledge that they understand and accept agency relationships involved in this transaction.
- T. **TERMINATION OF OFFER:** Unless accepted by Seller and delivered to Buyer by (Noon), the 4th day of November, 2011, this Purchase Agreement shall be null and void and all parties shall be released of any and all liability or obligations.
- U. Attached hereto and incorporated herein by reference is an Exhibit B that to the extent inconsistent with the Purchase Agreement, supercedes and controls the terms and conditions of the Purchase Agreement. By way of clarification, the release of Seller for the payment of any additional commissions from any broker set forth in paragraph 7 of Exhibit B shall require such agreement, as a condition precedent to closing, to be acceptable to the Seller and the Buyer.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

DEALERSHIP HOLDINGS, LLC

BUYER'S SIGNATURE

By: Thomas W. Kelley, Its Authorized Agent
PRINTED

DATE

BUYER'S SIGNATURE

DATE

PRINTED

27-2098643
BUYER'S SOCIAL SECURITY #FEDERAL ID #

BUYER'S SOCIAL SECURITY #FEDERAL ID #

260-434-4747 / 434-4707
(AREA CODE) TELEPHONE NUMBER/FAX NUMBER

(AREA CODE) TELEPHONE NUMBER/FAX NUMBER

633 Avenue of Auto's Fort Wayne, IN. 46804
BUYER'S ADDRESS FOR NOTICE PURPOSES

ACCEPTANCE OF PURCHASE AGREEMENT

Seller accepts the offer made by Buyer as set forth above, without change or condition at 4:35 (A.M.) (P.M.)
 (Noon) on the 2nd day of November, 2011.

CITY UTILITIES OF THE CITY OF FORT WAYNE BY AND
THROUGH THE BOARD OF WORKS-CITY OF FORT WAYNE

SELLER'S SIGNATURE

SELLER'S SIGNATURE

BY: Justin Brugger
Its: Senior Program Manager
PRINTED

PRINTED

SELLER'S SOCIAL SECURITY #FEDERAL ID #

SELLER'S SOCIAL SECURITY #FEDERAL ID #

(AREA CODE) TELEPHONE NUMBER/FAX NUMBER

(AREA CODE) TELEPHONE NUMBER/FAX NUMBER

SELLER'S ADDRESS FOR NOTICE PURPOSES

CONDITIONAL ACCEPTANCE BY SELLER [Counteroffer]

Seller accepts the offer made by Buyer, SUBJECT, HOWEVER, TO THE FOLLOWING PROVISIONS:

This counteroffer expires at 11:59 P.M. (local time),

.20 Dated: .20

SELLER'S SIGNATURE

SELLER'S SIGNATURE

BUYER'S ACCEPTANCE OF SELLER'S COUNTEROFFER

Buyer accepts and agrees to the provisions set forth in Seller's counteroffer. Dated:

.20

BUYER'S SIGNATURE

BUYER'S SIGNATURE

EXHIBIT "A"



Exhibit B

Conditions to Acceptance of Purchase Agreement
for 8.31 acres off Lima Road and Progress Road, dated
November 2, 2011

Seller: City Utilities of the City of Fort Wayne
Buyer: Dealership Holdings, LLC

1. Real Estate shall be developed as a full-service General Motors new car facility (the "Facility"). The development of the Real Estate by Buyer for any other purpose shall require Seller's prior written approval.
2. An Improvement Location Permit for the development and construction of the Facility shall be issued by the Allen County Building Department within one hundred eighty (180) days following the date of closing.
3. Seller shall have a ninety (90) day option to repurchase the Real Estate for an amount equal to one-hundred percent (100%) of the net Purchase Price in the event the Improvement Location Permit for the Facility is not issued within one hundred eighty (180) days following the date of closing.
4. Buyer may not assign this Agreement or any of Buyer's rights hereunder without the prior written consent of Seller. Notwithstanding the foregoing, the Buyer shall be permitted to assign this Agreement or Buyer's rights hereunder to a related entity for federal income tax purpose or to an entity owned by the owners of Buyer.
5. The Real Estate shall be conveyed to Buyer at closing. Buyer shall not reconvey the Real Estate to any third party (except a subsidiary of Buyer) or an entity owned by the owners of Buyer.
6. Seller agrees to work with Buyer and other parties having an economic interest in the development of the Real Estate and the adjoining properties to identify appropriate sources for the financing of infrastructure improvements to serve the subject area.
7. All real estate commissions due, if any, in connection with the sale of Real Estate to Buyer shall be paid by Buyer and the Buyer shall obtain a release of Seller for the payment of additional commissions from any broker in connection with the purchase of the Real Estate.
8. The purchase price for the Real Estate shall be the sum of \$1,250,000.00.
9. A lawsuit is pending in the Allen Circuit Court at Cause No. 02C01-1109-PL-45 wherein DeHaven Chevrolet, Inc. is the Plaintiff and General Motors Corporation is the Defendant (the "Lawsuit"). In addition to any other right under the Agreement, the Buyer shall have the right to extend the closing until seventy-five day (75) after any final unappealed judgment is rendered in the Lawsuit, provided, however, the Buyer may not extend the closing pursuant to this provision past December 31, 2012.

10. At closing, Seller and Buyer shall execute a recordable document containing Seller's option to repurchase rights hereunder and Seller may, at its option, record such document in the Office of the Recorder of Allen County, Indiana.

Seller:



Buyer:



FIRST AMENDMENT OF PURCHASE AGREEMENT

Menard, Inc. ("Seller") and Dealership Holdings, LLC ("Buyer") entered into a certain Real Estate Purchase and Sale Agreement dated October 4 2012, for the Premises located at Lima and Progress Roads in Allen County, Indiana (the "Purchase Agreement"). Capitalized terms used herein shall have the same meaning as set forth in the Purchase Agreement.

The Closing shall take place simultaneously with Buyer's purchase of a certain adjacent 8.27 acre parcel, more or less, of Real Estate from City Utilities of the City of Fort Wayne, and in no event later than January 31, 2013. All other terms and conditions of the Purchase Agreement remain in full force and effect and are unaffected by this First Amendment.

DATED as of this 19 day of December, 2012.

Dealership Holdings, LLC

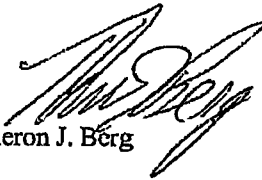
By:


VINCENT J. HEINY

Its: Authorized Agent

Menard, Inc.

By:


Theron J. Berg

Its: Real Estate Manager

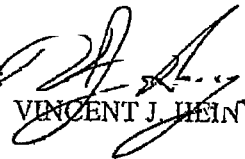
SECOND AMENDMENT OF PURCHASE AGREEMENT

City Utilities of the City of Fort Wayne ("Seller") and Dealership Holdings, LLC ("Buyer") entered into a certain Real Estate Purchase Agreement dated November 2, 2011, for Property located at Lima and Progress Roads in Allen County, Indiana (the "Purchase Agreement"), as amended by a First Amendment dated April 11, 2012. Capitalized terms used herein shall have the same meaning as set forth in the Purchase Agreement.

The Due Diligence Period of one hundred eighty (180) days set forth in paragraph J is hereby amended and changed to two hundred seventy (270) days. All other terms and conditions of the Purchase Agreement remain in full force and effect and are unaffected by this Second Amendment. This Second Amendment supercedes and replaces the First Amendment.

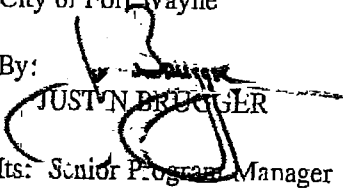
DATED as of this 24th day of May, 2012.

Dealership Holdings, LLC

By: 
VINCENT J. HEINY

Its: Authorized Agent

City Utilities of the City of Fort Wayne
By and Through the Board of Public Works -
City of Fort Wayne

By: 
JUSTIN BRUGLER

Its: Senior Program Manager

THIRD AMENDMENT OF PURCHASE AGREEMENT

City Utilities of the City of Fort Wayne ("Seller") and Dealership Holdings, LLC ("Buyer") entered into a certain Real Estate Purchase Agreement dated November 2, 2011, for Property located at Lima and Progress Roads in Allen County, Indiana (the "Purchase Agreement"), as amended by a First Amendment dated April 11, 2012, and a Second Amendment dated May 24, 2012. Capitalized terms used herein shall have the same meaning as set forth in the Purchase Agreement.

The Closing shall be on or before December 31, 2012. All Due Diligence Periods are extended to December 31, 2012. There are no Due Diligence Periods that extend past December 31, 2012. All other terms and conditions of the Purchase Agreement remain in full force and effect and are unaffected by this Third Amendment. This Third Amendment supercedes and replaces the First and Second Amendments.

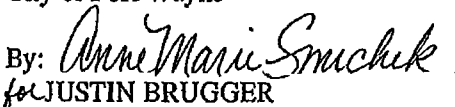
DATED as of this *1st* day of October, 2012.

Dealership Holdings, LLC

By: 
VINCENT J. HEINY

Its: Authorized Agent

City Utilities of the City of Fort Wayne
By and Through the Board of Public Works -
City of Fort Wayne

By: 
for JUSTIN BRUGGER

Its: Senior Program Manager

FOURTH AMENDMENT OF PURCHASE AGREEMENT

City Utilities of the City of Fort Wayne ("Seller") and Dealership Holdings, LLC ("Buyer") entered into a certain Real Estate Purchase Agreement dated November 2, 2011, for Property located at Lima and Progress Roads in Allen County, Indiana (the "Purchase Agreement"), as amended by a First Amendment dated April 11, 2012, a Second Amendment dated May 24, 2012, and a Third Amendment dated October 1, 2012. Capitalized terms used herein shall have the same meaning as set forth in the Purchase Agreement.

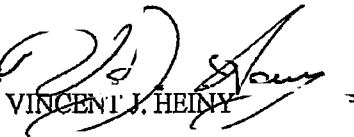
The Closing shall be on or before January 31, 2013.

All other terms and conditions of the Purchase Agreement and the Third Amendment remain in full force and effect and are unaffected by this Fourth Amendment.

DATED as of this 19th day of December, 2012.

Dealership Holdings, LLC

By:


VINCENT J. HEINY

Its: Authorized Agent

City Utilities of the City of Fort Wayne
By and Through the Board of Public Works –
City of Fort Wayne

By:


JUSTIN BREZGER

Its: Senior Program Manager

FIFTH AMENDMENT OF PURCHASE AGREEMENT

City Utilities of the City of Fort Wayne ("Seller") and Dealership Holdings, LLC ("Buyer") entered into a certain Real Estate Purchase Agreement dated November 2, 2011, for Property located at Lima and Progress Roads in Allen County, Indiana (the "Purchase Agreement"), as amended by a First Amendment dated April 11, 2012, a Second Amendment dated May 24, 2012, a Third Amendment dated October 1, 2012, and a Fourth Amendment dated December 19, 2012. Capitalized terms used herein shall have the same meaning as set forth in the Purchase Agreement.

There are currently two stockpiles of dirt that need to be removed from the property described on attached Exhibit A ("Menard Property"). Within sixty days after Closing, or within thirty (30) days after receiving written notice from Seller, whichever occurs first, Buyer, at its expense, shall remove the two stockpiles of dirt from the Menard Property. This agreement shall survive closing.

The Closing date is extended to February 15, 2013.

All other terms and conditions of the Purchase Agreement, and all of the prior amendments thereto, remain in full force and effect and are unaffected by this Fifth Amendment Fourth Amendment.

DATED as of this 21st day of January 13, 2013.

Dealership Holdings, LLC

By:


Vincent J. Heiny

Its: Duly Authorized Agent

City Utilities of the City of Fort Wayne
By and Through the Board of Public Works -
City of Fort Wayne

By:


JUSTIN BRUEGGER

Its: Senior Program Manager

BILL NO. R-13-01-20

REPORT OF COMMITTEE ON REGULATIONS

FEBRUARY ¹²~~5~~, 2013

**GLYNN HINES – CHAIR
RUSSELL JEHL – CO-CHAIR
ALL COUNCIL MEMBERS**

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS REFERRED A
**RESOLUTION, NO. R-13-01-20, APPROVING THE SALE OF CERTAIN REAL
ESTATE FOR THE CITY OF FORT WAYNE, INDIANA.** HAVE HAD SAID
ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO
THE COMMON COUNCIL THAT SAID ORDINANCE

DO PASS

DO NOT PASS

ABSTAIN

NO REC

[Handwritten signatures and initials]
Mantair A. B. Co
Honora A. Hines
Glynn Hines
Russell Jehl
Prof. Pappalardo
R. J.

SANDRA E. KENNEDY
CITY CLERK