

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, REGARDING THE APPROVAL OF THE APPROPRIATION OF AVAILABLE LOCAL INCOME TAX REVENUES TO PAY FOR THE ACQUISITION BY THE FORT WAYNE REDEVELOPMENT COMMISSION OF LAND AND IMPROVEMENTS DEEMED NECESSARY FOR FURTHER EXPANSION OF THE RIVERFRONT DEVELOPMENT PLANS OF THE CITY OF FORT WAYNE (301 W. SUPERIOR STREET)

WHEREAS, the Fort Wayne Redevelopment Commission (the “Commission”), governing body of the City of Fort Wayne, Indiana, Department of Redevelopment (the “Department”) and the Redevelopment District of the City of Fort Wayne, Indiana, exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, which has been codified in Indiana Code 36-7-14 et seq., as amended from time to time (the “Act”); and

WHEREAS, the Commission has previously designated and declared in accordance with the Act an area in the City of Fort Wayne, Indiana (the “City”), known as the Riverfront 1 / Columbia Street Economic Development Area, to be a redevelopment area and an allocation area (the “Area”), adopted a Redevelopment Plan, and established an allocation fund for said Area; and

WHEREAS, the Commission will approve the acceptance of an assignment of an Option and Real Estate Purchase and Sale Contract dated April 10, 2018 (“Option”), as attached to this Resolution as Exhibit A, to acquire the real estate and improvements commonly known as 301 West Superior Street, Fort Wayne, Indiana, and more particularly described in the Option (“Real Estate”). The Commission’s exercise of the Option to purchase the Real Estate requires the appropriation of local

1 income tax revenues to fund the purchase price of One Million Two Hundred Thousand
2 and No/100 Dollars (\$1,200,000.00) pursuant to the terms and conditions of the Option;
3 and,
4

5 WHEREAS, the Commission has determined that the completion of the
6 Project is in the best interests of the citizens and taxpayers of the City and has complied
7 with the provisions of the Act applicable to the purchase of the Real Estate; and

8 WHEREAS, the Commission has requested the appropriation of riverfront
9 local income tax revenues in an amount not to exceed One Million Two Hundred
10 Thousand and No/100 Dollars (\$1,200,000.00) to the payment of the purchase price
11 pursuant to the Option ("LIT Appropriation"); and

12 WHEREAS, the Common Council and the Redevelopment Director have
13 identified Three Hundred Thirty Seven Thousand Five Hundred and No/100 Dollars
14 (\$337,500.00) of unencumbered funds from the Infrastructure Improvement Fund to be
15 used for the acquisition of this property
16

17 WHEREAS, the Common Council has determined that the completion of
18 the acquisition of the Real Estate is in the best interests of the citizens and taxpayers of
19 the City and desires to provide for the expansion of the City's riverfront development
20 efforts and approve and appropriate the LIT Appropriation as provided in this
21 Resolution;
22

23 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
24 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

25 The Common Council finds, determines, ratifies and confirms that the
26 Acquisition of the Real Estate is in the best interests of the citizens and taxpayers of the
27 City of Fort Wayne, will support the redevelopment goals and objectives of the City of
28

1 Fort Wayne previously approved and authorized for the Area and will support the
2 ongoing riverfront development goals previously approved and authorized for the Area .

3 The Common Council hereby finds and determines that the LIT
4 Appropriation in an amount not to exceed Eight Hundred Sixty Two Thousand Five
5 Hundred and No/100 (\$862, 500.00, *equal to the \$1,200,000.00 option price less the*
6 *\$337,500.00 from the Infrastructure Improvement Fund*) is in the best interests of the
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9 The Common Council does hereby appropriate to the payment of the
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13 *Improvement Fund*).

14 Should The Rescue Mission express interest, Community Development shall
15 enter into negotiations with The Rescue Mission for a lease-back option on a month-to-
16 month basis, until such a time as a buyer or developer for the land at 301 West Superior
17 Street is determined or until a demolition date has been identified, no earlier than spring
18 2021. Any payments received for usage of the property shall be directed into LIT-
19 Riverfront repayment for the purchase of the property. There is no expectation that the
20 City will bear any financial burden by any negotiated arrangement.
21

22 The Redevelopment Director shall submit to the Common Council on or prior to
23 December 31, 2020 a written agreement that subject to the acquisition and disposition of
24 the subject property by the Summit Development Corp, LIT RIVERFRONT will be
25 reimbursed the lesser of Eight Hundred Sixty Two Thousand Five Hundred and No/100
26 (\$862,500.00) or the disposition proceeds.
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Deleted: The Common Council hereby finds and determines that the LIT Appropriation in an amount not to exceed One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) is in the best interests of the citizens and taxpayers of the City of Fort Wayne.

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6

7 This Resolution shall be in full force and effect from and after the time it
8 has been adopted by Common Council, approved by the Mayor and otherwise executed
9 and delivered in accordance with any and all laws appertaining thereto.
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11
12 
13 _____
14 Council Member

15 APPROVED AS TO FORM AND LEGALITY:

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17 _____
18 Carol Helton, City Attorney
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EXHIBIT A

OPTION AND REAL ESTATE PURCHASE AND SALE CONTRACT

(See attached)

EXHIBIT "A"
TO RESOLUTION

**OPTION AND REAL ESTATE PURCHASE
AND SALE CONTRACT**

THIS OPTION AND REAL ESTATE PURCHASE AND SALE CONTRACT ("Agreement") is made and entered into this 10 day of April, 2018, by and between THE FORT WAYNE RESCUE MISSION MINISTRIES, INC., an Indiana nonprofit corporation ("Seller"), and SUMMIT DEVELOPMENT CORP., an Indiana nonprofit corporation ("Buyer").

PRELIMINARY STATEMENT

Seller is the owner of certain real property and improvements thereon situated in the County of Allen, State of Indiana, and is willing to grant an option to purchase such real property and improvements to Buyer, and in the event of exercise of the option, Buyer is willing to purchase such real property and improvements from Seller, upon the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations expressed in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** Certain terms used herein are defined in this Section 1; other terms are defined within the text of this Agreement.

(a) "Buyer" shall mean Summit Development Corp., an Indiana nonprofit corporation, its nominees, successors and assigns, including without limitation, any entity that may be formed by it for purposes of acquiring the Premises.

(b) "Closing" shall mean the consummation of the purchase and sale of the Premises in accordance with the terms of this Agreement upon exercising the option and completion of all conditions precedent required to the satisfaction of Buyer and Seller, as the context may warrant.

(c) "Premises" shall mean that certain parcel of real property located in Allen County, Indiana, commonly known as 301 West Superior Street, Fort Wayne, Indiana 46802, as presently identified on Exhibit A attached. The full legal description of the Premises shall be noted on the survey described in Section 4 of this Agreement. The Premises include all buildings, improvements, fixtures, tenements, hereditaments and appurtenances belonging or in any wise appertaining to such real property, and all of Seller's right, title and interest, if any, in and to (i) any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining such real property to the center line thereof to the extent included in the legal description of the Premises, but subject to public rights-of-way and easements; (ii) any strips and gores of land adjacent to, abutting or used in connection with such real property; (iii) any easements and rights, if any, inuring to the benefit of such real property or to Seller; and (iv) any and all rights in and to any leases, licenses or other assets of any type or nature pertaining to the use of such real property. It is agreed that the Premises shall be deemed to

include all right, title and interest of Seller in and to the land and improvements, including such interests to be acquired as a condition of this Agreement, commonly known as 301 West Superior Street, Fort Wayne, Indiana 46802.

(d) "Purchase Price" shall mean the Purchase Price for the Premises in the aggregate sum of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00).

(e) "Seller" shall mean the Fort Wayne Rescue Mission Ministries, Inc., an Indiana nonprofit corporation.

(f) "Title Commitment" shall mean the Commitment issued by an ALTA approved title insurance company ("Title Company") approved by the Buyer in which the title insurance company commits itself to issue to Buyer an Owner's Policy of Title Insurance upon demand in a form approved by Buyer, with its general exceptions deleted, in the full amount of the Purchase Price, setting forth the state of the title to the Premises and subject only to the "permitted exceptions" described below.

2. Option to Purchase.

(a) Initial Option. In consideration of the sum of Ten Thousand and No/100 Dollars (\$10,000.00) paid by Buyer and tendered to Seller with the signed Agreement by Buyer, the receipt is acknowledged upon the execution of this Agreement by Seller, ("Option Payment"), Seller grants, bargains and sells to Buyer the exclusive option to purchase the Premises ("Option"). Unless exercised by Buyer, the Option shall expire on June 30, 2020, at Noon Eastern Time.

(b) Extension of Option. In the event this Option is not exercised by Buyer during the initial term described above, Buyer may, at its sole election, extend the term of this Option to expire on June 30, 2021, by notifying Seller prior to May 1, 2020, of its intent to so extend the term and by delivering to Seller with such notice the sum of Five Thousand and No/100 Dollars (\$5,000.00) ("Additional Option Payment"). Unless exercised by Buyer, the Option as extended shall expire on the June 30, 2021, at Noon Eastern Time

(c) Notice of Exercise. Buyer may exercise the Option by giving notice to Seller as provided in this Agreement before expiration of the original option term, or the extended term, as the case may be. Notice shall be deemed to have been given if made in accordance with Section 13 below.

(d) Terms of Purchase. In the event of exercise, Seller shall sell to Buyer and Buyer shall purchase from Seller the Premises in accordance with the terms and conditions of this Agreement.

(e) Access to Premises. From and after the date of this Agreement, Seller shall provide Buyer with access to the Premises to conduct such inspections and testing as Buyer deems necessary, including the performance of the Survey,

provided Buyer shall provide Seller with reasonable written notice prior to conducting such inspections and testing. Buyer shall conduct such inspections and testing in a manner which will cause the least amount of interruption or interference with Seller's ongoing operations as is reasonable under the circumstances. Buyer agrees to indemnify and hold Seller harmless from and against any damage to the Premises caused by such inspections and testing.

3. Purchase Price for Premises. The Purchase Price for the Premises shall be payable in the following manner:

(a) Option Payment. In the event of exercise and Closing, the Option Payment and the Additional Option Payment shall be applied against the Purchase Price. In the event Buyer does not exercise this Option, the Option Payment and the Additional Option Payment will be forfeited to Seller as consideration for the Option. If the Buyer exercises the Option, but does not close because the title commitment is unacceptable and does not meet the title requirements of this Agreement, and Seller cannot cure such title exceptions or have the same insured over within the time period provided, then Buyer may terminate this Agreement and the Option Payment and the Additional Option Payment shall be refunded to Buyer.

(b) Balance of Purchase Price. The balance of the Purchase Price, subject to such adjustments, credits, deductions and prorations, if any, shall be paid in cash at Closing.

4. Survey of Premises. Upon Buyer's exercise of the Option, Buyer shall order and procure, at the expense of Buyer, a boundary survey of the Premises with all easements (including utility easements), available utility services, encroachments, rights-of-way and other matters (whether or not of record) pertaining to or affecting the Premises, and showing the location, area and dimensions of all improvements, easements, streets, roads, railroad spurs, flood hazard areas and alleys on or abutting said Premises, and providing a legal description of the Premises ("Survey"). Such Survey shall be dated or re-dated at a date not less than thirty (30) days prior to the Closing, and unless otherwise approved by Buyer, shall (a) be made in accordance with the "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys," established and adopted jointly by the American Land Title Association and the National Society of Professional Surveyors in 2016, and (b) contain such Table A items as deemed necessary by Buyer. Buyer shall receive a credit against the Purchase Price at Closing for the cost of the Survey described in this Section 4, not to exceed \$1,500.00. Additional Survey costs incurred by Buyer or required by Buyer's mortgagees shall be at the sole cost of Buyer.

5. Title to Premises.

(a) State of Title to be Conveyed. At the Closing, Seller shall convey to Buyer, its nominees, successors or assigns, by general corporate warranty deed, good and merchantable and insurable fee simple title to the Premises, free from all liens, encumbrances, restrictions, rights-of-way and other matters, excepting only

the "permitted exceptions" described as follows: (i) the lien of general real estate taxes not yet due and payable (ii) liens or encumbrances of a definite or ascertainable amount and which will be paid and discharged in full by or for Seller at or prior to the Closing; and (iii) zoning ordinances and easements of record affecting the Premises which have been approved by Buyer.

(b) Title Insurance Commitment and Policy. On or before Buyer's exercise of the Option, Buyer shall order and procure the Title Commitment at the expense of Buyer. At the Closing, a Policy of Title Insurance or an endorsement to the Title Commitment shall be issued to Buyer insuring Buyer's fee simple interest in the Premises in the state required by Section 5(a) above, with all general exceptions deleted, and subject only to the "permitted exceptions". Said policy shall contain such endorsements as Buyer may, in Buyer's sole discretion, deem necessary. Buyer shall receive a credit against the Purchase Price at Closing for the cost of the Title Commitment and Policy described in this Section 5(b), not to exceed \$1,500.00. Additional title costs incurred by Buyer or required by Buyer's mortgagees shall be at the sole cost of Buyer.

(c) Objections to State of Title. If title to the Premises is not in the state required by Section 5(a) above, Buyer shall give written notice to Seller within thirty (30) business days after the date it receives the Title Commitment and Survey, specifying its objection(s) to the state of title to the Premises. Seller shall have a period of thirty (30) days in which it shall use its best efforts to remedy the objection(s) or to induce the Title Company to issue an endorsement to the Title Commitment satisfactory to Buyer insuring over or removing such objection(s). If Buyer's objection(s) to the state of title to the Premises are not remedied by Seller within such thirty (30) day period, or such further period as Buyer may, in its sole discretion, grant, then Buyer shall have the right, within thirty (30) days thereafter, to give written notice to Seller that Buyer waives such title defects or objections and elects to proceed to acquire the Premises without any abatement of the Purchase Price and to take title to the Premises subject to such defects or objections; otherwise, this Agreement shall be automatically cancelled and rescinded, the Option Payment and the Additional Option Payment shall be refunded to Buyer, and the rights and obligations of the parties shall cease.

6. Seller's Covenants, Warranties and Representations. To the best of Seller's actual knowledge as of the effective date of this Agreement, and without any duty to investigate, Seller covenants, warrants and represents as follows:

(a) Seller has not received any notice of, nor does it have any actual knowledge of, any violation of any law, zoning ordinance, fire code or regulation, health or environmental laws, regulations, rulings or ordinances, or of any other violations or alleged violations of law not cured affecting the Premises; and Seller has not received any notice, does not have any actual knowledge of or information as to any existing or threatened condemnation or other legal action of any kind affecting the Premises.

(b) Seller has not received any notice of, nor does it have any actual knowledge of, any actual or contemplated special assessments against the Premises, or re-assessments for general real estate tax purposes affecting the Premises.

(c) From the date of this Agreement up to the closing date, Seller shall conduct its business involving the Premises in the ordinary course of its business, and during such period will refrain from creating or concurring in the creation on the Premises of any easements or other encumbrances which would prevent Seller from conveying title to Buyer subject only to such exceptions as herein permitted.

(d) Except for the items which are to be assumed by Buyer, if any, Seller shall be solely liable for the payment of all costs and expenses, liabilities, obligations and claims arising solely out of Seller's ownership and operation of the Premises prior to the Closing.

(e) Seller owns fee simple marketable title to the Premises and will take and perform those acts which are necessary in order to fulfill the terms and conditions of this Agreement.

(f) To the best knowledge of Seller, there is not constructed, deposited, stored, disposed, placed or located on the Premises any material, element, compound, solution, mixture, substance or other matter of any kind, including solid, liquid or gaseous material, that constitutes a Hazardous Material as hereafter defined, with the exception of asbestos which may be contained within certain building materials due to the age of the building on the Premises. The Seller has no actual knowledge of the presence of asbestos in any such materials. For purposes of this Agreement, Hazardous Material shall mean any material or substance:

(i) defined as a "Hazardous Substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et. seq.*) and amendments thereto and regulations promulgated thereunder;

(ii) containing gasoline, oil, diesel fuel or other petroleum products;

(iii) defined as a "Hazardous Waste" pursuant to the Federal Resources Conservation and Recovery Act and all regulations promulgated thereunder;

(iv) containing Polychlorinated Biphenyls (PCB);

(v) containing Asbestos;

(vi) which is radioactive;

(vii) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance or policy, or which is, or becomes defined as "Hazardous Waste" or as "Hazardous Substance" under any federal, state or local statute, regulation, ordinance or policy or any toxic, explosive, corrosive or other hazardous substance, material or waste, that is or becomes, regulated by any federal, state or local governmental authority or which causes a nuisance on the Premises or any portion thereof.

(g) The representations, warranties and covenants contained in this Agreement shall survive said closing date and run in favor of, and for the benefit of, Buyer, its successors and assigns.

(h) Seller has ordered no material, labor or services which could result in the filing of any mechanics' or materialmen's lien against the Premises.

7. Buyer's Covenants and Warranties. Buyer covenants, warrants and represents as follows:

(a) Buyer is a validly existing entity in good standing under, and qualified to transact business in, the State of Indiana.

(b) The person executing this Agreement on behalf of Buyer has been duly authorized and has the full right and authority to enter into this Agreement on behalf of Buyer. The execution and delivery by Buyer of, and performance and compliance by Buyer with, the terms and provisions of this Agreement do not violate any term, condition or provision of (i) Buyer's organizational documents; (ii) any judgement, order, decree, regulation or ruling of any court or other government authority to which Buyer is subject; or (iii) any agreement or contract to which Buyer is a party or is bound. No consent, waiver, or approval by any third party which has not already been received is required in connection with the execution, delivery and performance by Buyer of this Agreement.

8. Conditions to Closing. Buyer and Seller agree that the sale and purchase of the Premises is subject to the satisfaction of the following contingencies and conditions within sixty (60) days of Buyer's exercise of the Option and, if the following contingencies and conditions are not so satisfied, this Agreement shall, at the option of Buyer, be cancelled and rescinded and the Seller shall return the Option Payment and the Additional Option Payment, if any, to Buyer. Notwithstanding the foregoing, Buyer may, at its option, waive any of the conditions or contingencies set forth in this Section 8 and proceed to purchase the Premises from Seller.

(a) All warranties, representations and covenants given by Seller herein, or in any document, instrument or exhibit to be given or furnished by Seller, shall be true and correct and not have been breached on and as of the date of Closing as if made on that date.

(b) Seller shall have terminated all leasehold interests of any type or nature in and to the Premises, so that upon Closing of the purchase as herein intended, the Premises shall be delivered to Buyer in the state herein required free and clear of all leasehold interests, tenancies or rights to possession of any type or nature, except as provided in subparagraph (c) below.

(c) Seller shall have ceased its business operations from the Premises and shall have removed, at its expense, all equipment, personal property and other items of any kind or nature from the Premises.

(d) The state of title to the Premises has remained in the state reflected on the Title Commitment, subject only to the permitted exceptions, through the date of Closing.

(e) Buyer shall have approved the form and content of the deed conveying the Premises to Buyer, the vendor's affidavit, the non-foreign certificate, the closing statement covering the purchase and sale of the Premises, and all other documents and instruments required to effect the sale of the Premises and the agreements of the parties herein set forth; and Seller agrees to prepare such documents and instruments promptly upon notification by Buyer that all conditions precedent above set forth have been performed or waived. Seller shall also furnish to Buyer such proof of authority as requested by Buyer or the Title Company authorizing Seller to enter into and consummate this transaction.

9. Proration of Real Estate Taxes. Seller is a tax exempt religious organization and pays no real property taxes in relation to the Premises, thus no proration of taxes at Closing is necessary. Buyer shall be solely responsible for the payment of any real property taxes and special assessments imposed on the Premises from the date of Closing thereafter.

10. Closing.

(a) Buyer and Seller acknowledge and agree that Seller is in the process of relocating its nonprofit operations from the Premises to a new location in downtown Fort Wayne, Indiana ("New Location"). In the event that all conditions to Closing have been either satisfied or waived excepting only the fact that Seller remains in possession of the Premises and the fact that the New Location is not ready for occupancy, then, subject to the terms and conditions of this Section 10(a), Buyer and Seller agree the Closing shall be extended to the date that is no later than ten (10) days after the date that the New Location is ready for occupancy. For purposes of this Agreement, the New Location shall be ready for occupancy when (i) construction of the New Location is substantially completed, and (ii) a valid certificate of occupancy for the New Location has been issued to Seller. Notwithstanding anything to the contrary in this Agreement, Buyer and Seller agree that in all events the Closing shall occur on or before June 30, 2021. Prior to Closing, all risk of loss regarding the property shall remain with Seller.

(b) Closing shall occur once all conditions set forth in Section 8(a) through 8(e) or elsewhere in this Agreement have been satisfied or waived, within the time period required. The Closing shall take place at such time and date as described in Section 10(a) above, unless extended in writing by mutual agreement of the parties. The Closing shall occur at the offices of the Title Company. Buyer and Seller agree to deposit with Title Company not later than the date of the Closing all executed documents required in connection with this transaction, including such documents reasonably necessary to consummate the transaction, as requested by the Title Company issuing the Title Policy. Upon receipt of all necessary documents, and when the Title Company is in a position to issue to Buyer a Policy of Title Insurance, Title Company shall on the date of the Closing, upon instructions from Buyer and Seller, cause the deed to the Premises and any other necessary or appropriate instruments to be filed for record. The Option Payment and the Additional Option Payment, if any, shall be applied toward the Purchase Price at Closing.

(c) Buyer shall receive a credit at Closing for the costs of the Survey, title commitment and search, and title policy premium as provided in this Agreement. Each party shall pay their own attorneys, brokerage, engineering and other professional fees. Each party shall be responsible for its other costs and expenses in accordance with the obligations or conditions to be performed by each respective party. At the time of Closing, Seller and Buyer shall execute and deliver a closing statement setting forth said Purchase Price, with such closing adjustments as may be applicable.

11. Remedies Upon Default. In the event Buyer breaches or defaults under any of the terms of this Agreement, Seller shall be entitled to retain the Option Payment and the Additional Option Payment, if any, which shall be its sole remedy at law or in equity. In the event Seller breaches or defaults under any of the terms of this Agreement, Buyer may terminate this Agreement and shall receive a refund of the Option Payment and the Additional Option Payment, or Buyer shall have the right to compel specific performance of this Agreement and the right to recover Buyer's costs and expenses incurred in enforcing the terms and conditions of this Agreement, including but not limited to Buyer's attorney fees and court costs.

12. Indemnity. Buyer and Seller agree to indemnify, defend and hold the other harmless from and against any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses, costs and expenses (including, without limitation, attorneys fees) arising or resulting from, or suffered, sustained or incurred by the damaged party as a result (direct or indirect) of (a) any claims accruing prior to the date of Closing to which the other party had actual knowledge and failed to disclose same or (b) the untruth, inaccuracy or breach of any of the covenants, warranties and representations made by the Buyer or Seller in this Agreement or in any other documents or instruments executed by Buyer or Seller to bring this transaction to a close, which indemnity shall survive the Closing.

13. Notices. All notices, elections, requests and other communications required or necessitated under this Agreement shall be in writing and shall be deemed sufficiently given when personally delivered or when deposited in the United mail, postage prepaid, certified or

registered, or when delivered to a nationally recognized overnight courier service with guaranteed next business day delivery and addressed as follows (or to such other person, or to such other address, of which any party hereto shall have given written notice as provided herein):

IF TO SELLER: The Fort Wayne Rescue Mission Ministries, Inc.
 Attn: Jeff Musick
 301 West Superior Street
 Fort Wayne, IN 46802

IF TO BUYER: Summit Development Corp.
 Attn: Karl Bandemer
 200 East Berry Street, 4th Floor
 Fort Wayne, IN 46818

14. Brokerage Commission. Seller and Buyer each warrant and represent that there are no finders or brokers entitled to fees or commissions which may be due from the introduction of the Seller and Buyer and/or the purchase and sale of the Premises.

15. Eminent Domain. In the event that, prior to the date of the Closing, Seller acquires knowledge of any pending or threatened claim, suit or proceeding to condemn or take all or any part of the Premises under the power of eminent domain, then Seller shall immediately give notice to Buyer, and Buyer shall have the right to terminate its obligations under this Agreement by delivering notice to Seller within thirty (30) days after receiving notice from Seller of such condemnation or taking, and the Option Payment and Additional Option Payment, if any, shall be refunded to Buyer and the rights and obligations of the parties under this Agreement shall cease. If Buyer shall not elect to terminate this Agreement pursuant to this Section 15, the parties shall proceed with the Closing in accordance with the terms of this Agreement without abatement of the Purchase Price, but all proceeds of any condemnation award shall be payable solely to Buyer, and Seller shall have no interest such an award.

16. Miscellaneous.

(a) Survival of Agreement. The representations, warranties and covenants of Seller and Buyer contained in this Agreement or in any other document executed by Seller or Buyer to effect the intended transaction, shall survive the Closing and shall remain in full force and effect at all times.

(b) Agreement Binding. This Agreement shall be binding upon and shall inure to the benefit of the Seller and Buyer and their respective successors and assigns.

(c) Headings and Captions. The several headings and captions of the Sections and Subsections used in this Agreement are for convenience or reference only and shall, in no way, be deemed to limit, define or restrict the substantive provisions of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement of Buyer and Seller with respect to the purchase and sale of the Premises superseding any prior or contemporaneous agreement with respect thereto. No amendment or modification of this Agreement shall be binding upon the parties unless made in writing and signed by both Seller and Buyer.

(e) Cooperation. Buyer and Seller shall cooperate fully with each other to carry out and effectuate the purchase and sale of the Premises in accordance with this Agreement. Wherever the approvals of Buyer or Seller are required, such approvals shall not unreasonably be withheld, conditioned or delayed.

(f) Governing Law. This Agreement and the rights of the parties shall be governed by and construed in accordance with the laws of the State of Indiana.

(g) Counterparts. Facsimile or emailed signatures shall be deemed an original and this Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) Recording. This Agreement shall not be recorded and the parties agree to execute, acknowledge and record the Memorandum of Option and Real Estate Purchase and Sale Contract attached as Exhibit B.

(i) Execution of Agreement. Unless an original of this Agreement, fully executed by the Seller, has been delivered to Buyer on or before 11:59 p.m., April 15, 2018, this Agreement shall be null and void, without liability of any type or nature to Buyer.

[Remainder intentionally blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties have executed this Option and Real Estate Purchase and Sale Contract on the day, month and year set forth below.

Executed by Buyer this 21st day of March, 2018.

SUMMIT DEVELOPMENT CORP.,
an Indiana nonprofit corporation

By: 

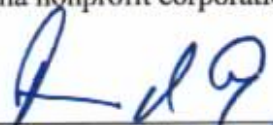
Printed: KARL BANDEMER

Its: MEMBER

"Buyer"

Accepted and executed by Seller this 10th day of ~~March~~ ^{April}, 2018.

**THE FORT WAYNE RESCUE MISSION
MINISTRIES, INC.,**
an Indiana nonprofit corporation

By: 

Printed: DONOVAN A. COOLEY

Its: CEO

"Seller"

EXHIBIT "A"
Legal Description of the Premises
301 W. Superior

Lots 1, 2, 3, 4 and 5 of Block No. 4 of Ewing's Addition to the City of Fort Wayne, Indiana.

Excepting that portion of Lots 1, 2 and 4 granted to the City of Fort Wayne via a Deed for Alley Purposes dated June 16, 1954 and recorded in Book 482, Pages 48-50 in the Allen County Recorder's Office.

And excepting that portion of Lots 1, 2 and 4 granted to the New York, Chicago and St. Louis Railroad Company via a Warranty Deed dated June 16, 1954 and recorded in Book 482, Pages 51-53 in the Allen County Recorder's Office.

And excepting that portion of Lot 3 granted to the New York, Chicago and St. Louis Railroad Company via a Warranty Deed dated August 18, 1954 and recorded in Book 484, Pages 355-356 in the Allen County Recorder's Office.

And excepting that portion of Lot 3 granted to the City of Fort Wayne via a Deed for Alley Purposes dated August 18, 1954 and recorded in Deed Book 484, Pages 357-358 in the Allen County Recorder's Office.

NOTE: Legal description used in conveyance documents will be as set forth in the survey obtained under Section 4 of this Agreement.

END OF EXHIBIT "A"

EXHIBIT B

**MEMORANDUM OF OPTION AND
REAL ESTATE PURCHASE AND SALE CONTRACT**

(See attached)

**MEMORANDUM OF OPTION AND
REAL ESTATE PURCHASE AND SALE CONTRACT**

THIS MEMORANDUM OF OPTION AND REAL ESTATE PURCHASE AND SALE CONTRACT ("Memorandum") is entered into by and between the parties hereto to evidence the existence of An Option and Real Estate Purchase and Sale Contract dated April __, 2018, (the "Agreement"), made by THE FORT WAYNE RESCUE MISSION MINISTRIES, INC., an Indiana nonprofit corporation (referred to herein as "Seller"), and SUMMIT DEVELOPMENT CORP., an Indiana nonprofit corporation (referred to herein as "Buyer")

1. The real property subject to the Agreement (the "Premises") is located in Allen County, Indiana, and is more particularly described by the legal description on Exhibit A, attached hereto and made a part hereof. The Premises include all improvements located upon the real property of any type or nature and the tenements, hereditaments and appurtenances belonging or in anywise appertaining to such real property.

2. Pursuant to the terms of the Agreement, Seller has granted to Buyer an option to purchase the Premises ("Option"). The Option may be exercised in accordance with the terms and provisions set forth in the Agreement.

3. The term of the Option shall commence April 10, 2018, and shall expire at 11:59 p.m. EST., on June 30, 2020 unless extended to June 30, 2021.

4. The Option is binding upon and inures to the benefit of Seller, Buyer and their respective heirs, legal representatives, administrators, successors and assigns.

5. All other terms, covenants and agreements as set forth in the Agreement, an executed counterpart of which is in the possession of each party thereto, are incorporated herein by reference hereto and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum effective this 10 day of April, 2018.

THE FORT WAYNE RESCUE MISSION
MINISTRIES, INC.,
an Indiana nonprofit corporation

By: [Signature]
Printed: DONOVAN A. COLEY
Its: CEO

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said county and state, on this 10 day of April, 2018, personally appeared DONOVAN A. COLEY, the CEO of THE FORT WAYNE RESCUE MISSION MINISTRIES, INC., an Indiana nonprofit corporation, and acknowledged the execution of the foregoing Memorandum of Option And Real Estate Purchase And Sale Contract for and on behalf of said corporation, having been authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

My Commission Expires: 11/18/2024
[Signature] Notary Public
PATRICK R HESS
(Printed Name)

Resident of Allen County, Indiana



SUMMIT DEVELOPMENT CORP.,
an Indiana nonprofit corporation

By: *Karl Bandemer*

Printed: KARL BANDEMER

Its: MEMBER

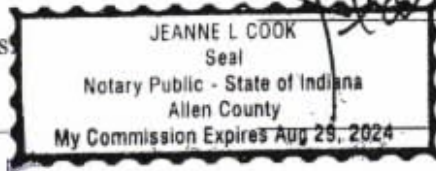
“Buyer”

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said county and state, on this 21 day of March, 2018, personally appeared *Karl Bandemer*, the member of SUMMIT DEVELOPMENT CORP., an Indiana nonprofit corporation, and acknowledged the execution of the foregoing Memorandum of Option And Real Estate Purchase And Sale Contract for and on behalf of said corporation, having been authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

My Commission Expires _____



Jeanne Cook

Notary Public

(Printed Name)

Resident of _____ County, Indiana

This document prepared by: Jon A. Bomberger, Faegre Baker Daniels LLP, 110 West Berry Street, Suite 2400, Fort Wayne, Indiana 46802.

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: *Jon A. Bomberger*

EXHIBIT A
TO MEMORANDUM OF OPTION
AND REAL ESTATE PURCHASE AND SALE CONTRACT

[Legal description to be inserted]

Exhibit A to Memorandum of Option
and Real Estate Purchase and Sale Contract

EXHIBIT "A"
Legal Description of the Premises
301 W. Superior

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Excepting that portion of Lots 1, 2 and 4 granted to the City of Fort Wayne via a Deed for Alley Purposes dated June 16, 1954 and recorded in Book 482, Pages 48-50 in the Allen County Recorder's Office.

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And excepting that portion of Lot 3 granted to the City of Fort Wayne via a Deed for Alley Purposes dated August 18, 1954 and recorded in Deed Book 484, Pages 357-358 in the Allen County Recorder's Office.

NOTE: Legal description used in conveyance documents will be as set forth in the survey obtained under Section 4 of this Agreement.

END OF EXHIBIT "A"

DIGEST SHEET

TITLE OF RESOLUTION. A Resolution of the Common Council of the City of Fort Wayne, Indiana, regarding the approval of the appropriation of available local income tax revenues to pay for the acquisition by the Fort Wayne Redevelopment Commission of land and improvements deemed necessary for further expansion of the Riverfront Development plans of the City of Fort Wayne (301 W. Superior Street)

DEPARTMENT REQUESTING RESOLUTION. Redevelopment Commission.

SYNOPSIS OF RESOLUTION. Fort Wayne Redevelopment Commission is asking for approval of a resolution approving the appropriation of \$1,200,000 of LIT Riverfront funds – Property Acquisition budget line to acquire 0.92 acre of real estate located at 301 W. Superior Street, commonly known as the Fort Wayne Rescue Home and Mission.

Two appraisals were obtained at \$1,200,000 and \$1,220,000. An Option and Real Estate Purchase and Sale Contract was entered into on April 10, 2018 between The Fort Wayne Rescue Mission Ministries, Inc. and Summit Development Corp. The Fort Wayne Redevelopment Commission plans to accept an assignment of this Option and will exercise the Option to purchase the real estate upon Council's approval of the requested appropriation.

EFFECT OF PASSAGE. Passage of the resolution will give the Department of Redevelopment the ability to acquire a key piece of real estate located in the Riverfront district. With this acquisition, the City of Fort Wayne will control the land that can be used for future private development. The immediate plans for this property include demolition of the building. The site will be restored with a temporary parking lot to support Promenade Park and neighboring business until future plans for private development are in place.

EFFECT OF NON-PASSAGE. Without this key piece of real estate, the full breadth of Riverfront Fort Wayne Phases II and III cannot be realized. The building will be left to further deteriorate, creating blight in the area and leaving undue burden on an important local nonprofit corporation.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). \$1,200,000 of LIT Riverfront funds – property acquisition budget line

ASSIGNED TO COMMITTEE (PRESIDENT). _____



COMMUNITY DEVELOPMENT REDEVELOPMENT

Thomas C. Henry, Mayor

City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne, IN 46802

260-427-2150 fwcommunitydevelopment.org

September 17, 2020

MEMO

To: City of Fort Wayne Common Council
Copy: City of Fort Wayne Redevelopment Commission
From: Nancy Townsend, Executive Director, 427-2323
Re: **Resolution approving property acquisition - Riverfront**

This memo requests Common Council approval of a resolution approving the appropriation of \$1,200,000 of LIT Riverfront funds – Property Acquisition budget line to acquire 0.92 acre of real estate located at 301 W. Superior Street, commonly known as the Fort Wayne Rescue Home and Mission.

Enclosed herewith, please find a digest sheet and a resolution approving a property acquisition.

This property will be used in support of the plans for Riverfront Fort Wayne Phases II and III. This land is important for future private development in this area. The immediate plans for this property include demolition of the building. The site will be restored with a temporary parking lot to support Promenade Park and neighboring business until future plans for private development are in place. A request for proposals for building demolition is currently being prepared. Proposals, obtained through the public bidding process, are expected by late October.

As additional background, two appraisals were obtained at \$1,200,000 and \$1,220,000. An Option and Real Estate Purchase and Sale Contract was entered into on April 10, 2018 between The Fort Wayne Rescue Mission Ministries, Inc. and Summit Development Corp. (attached as Exhibit A to the resolution). The Fort Wayne Redevelopment Commission plans to accept an assignment of this Option and will exercise the Option to purchase the real estate upon Council's approval of the requested appropriation.

Vibrant. Prosperous. Growing.



REPORT OF COMMITTEE ON FINANCE

October 13, 2020

Jason Arp Chair

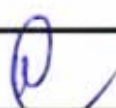

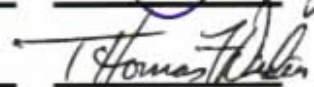


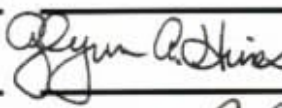

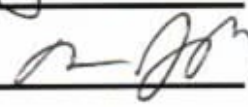


Sharon Tucker Co-Chair

All Council Members

A Resolution of the Common Council of the City of Fort Wayne, Indiana, regarding the approval of the appropriation of available Local Income Tax Revenues to pay for the acquisition by the Fort Wayne Redevelopment Commission of Land and Improvements deemed necessary for further expansion of the Riverfront Development Plans of the City of Fort Wayne

Property at 301 W. Superior Street for a purchase price of \$1,200,000.00

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A


Read the first time in full and on motion by Councilperson Arp.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilperson Arp, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: October 27, 2020




 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Resolution No. R-20-09-30
AAAAAA on the 27th day of October, 2020

ATTEST:



 LANA R. KEESLING
 CITY CLERK



 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th
 of October 2020, at the hour of 2:05 o'clock P.M. E.S.T.

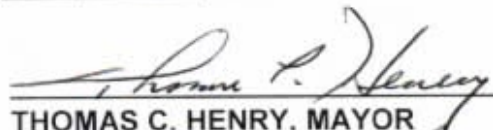


 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 29th day of OCTOBER

2020, at the hour of 8:00 o'clock AM E.S.T.

FOR THE CLERK
RECEIVED
 OCT 29 2020
 LANA R. KEESLING
 CITY CLERK



 THOMAS C. HENRY, MAYOR