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2 **BILL NO. R-21-09-05**

3 **RESOLUTION NO. R-54-21**

4 **A RESOLUTION APPROVING THE PURCHASE**
5 **OF CERTAIN REAL ESTATE LOCATED AT 4820**
6 **E. STATE BLVD., ST. JOSEPH TOWNSHIP,**
7 **FORT WAYNE, INDIANA, FOR THE CITY OF**
8 **FORT WAYNE - \$279,000.00.**

9 **WHEREAS**, the City of Fort Wayne, desires to purchase property
10 located at 4820 E. State Blvd. in St. Joseph Township, Fort Wayne, Indiana; and

11 **WHEREAS**, the purchase of this property will include the acquired
12 real estate to relocate Fire Station 14 to this location;

13 **WHEREAS**, the purchase price for the property is TWO HUNDRED
14 SEVENTY-NINE THOUSAND AND 00/100 DOLLARS – (\$279,000.00); and

15 **WHEREAS**, Sec. 37-25 of the City of Fort Wayne Code of
16 Ordinances, requires the Common Council approval of any purchase of real estate
17 by the City.

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20 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON**
21 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

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23 **SECTION 1.** The purchase of real estate, located at 4820 E. State
24 Blvd. in St. Joseph Township, Fort Wayne, Indiana specifically described in the
25 Purchase Agreement, is hereby approved and agreed to. The appropriate officials
26 of the City are hereby authorized to execute all documents necessary to
27 accomplish said purchase.
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REAL ESTATE PURCHASE AGREEMENT

1. This Real Estate Purchase Agreement (“**Agreement**”) is made to be effective the 23 day of June, 2021 (the “**Effective Date**”), by and between Tom Schmucker Construction LP, an Indiana limited partnership (“**Seller**”), and the City of Fort Wayne, Indiana, an Indiana municipal corporation, or its nominee, successors or assigns (“**Buyer**”).
2. **PARTIES:** Seller and Buyer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.
3. **PROPERTY:** Seller agrees to sell and convey to Buyer, and Buyer agrees to buy from Seller the real property depicted on **Exhibit A** attached hereto and incorporated herein, consisting of approximately 1.3 total acres, with existing site improvements, and all privileges and appurtenances pertaining thereto, including but not limited to all of Seller's right, title, and interest in and to all easements, adjacent streets, utility reservations, alleys, rights of way, strips and gores of land, mineral rights, water and water rights, wells, well rights and permits, water and sewer taps, sanitary or storm sewer capacity or reservations, rights under utility agreements with any applicable governmental or quasi-governmental entities or agencies with respect to the providing of utility services to such real property, tenements, hereditaments, privileges, licenses and appurtenances, reversions, and remainders in any way belonging, remaining, or appertaining thereto and together with all improvements, fixtures, personal property, trees, timber, or other crops and plants and minerals located thereunder or thereon (collectively referred to as the “**Property**”).
4. **PRICE:** The net purchase price for the Property (the “**Purchase Price**”) shall be Two Hundred and Seventy-Nine Thousand and 00/100 Dollars (\$279,000.00). The Purchase Price shall be payable at Closing (as defined below) and subject to the prorations and adjustments hereinafter described and in accordance with the terms and conditions stated in this Agreement.
5. Intentionally omitted.
6. **EARNEST MONEY:** Five Thousand and 00/100 Dollars (\$5,000.00) has been deposited by Buyer, as “**Earnest Money**,” with RealtyFlex of N.E. Indiana LLC, 6315-C Mutual Dr, Fort Wayne, IN 46825, Attn: David Augustyniak, as “**Escrow Agent**” pursuant to the Letter of Intent executed by the Parties and Escrow Agent on May 24, 2021, the terms and conditions of which are incorporated herein and made a part hereof by reference (the “**Letter of Intent**”). If this Agreement is terminated by Buyer prior to the expiration of the Due Diligence Period (as defined in **Section 9** herein), as the same may be extended, or pursuant to a Seller Default (as hereinafter defined), the Earnest Money shall be immediately returned to Buyer. The Earnest Money and any Additional Earnest Money (as hereinafter defined) shall be credited to the Purchase Price at Closing (as hereinafter defined). Upon expiration of the Due Diligence Period, as the same may be extended and Government Approvals (as hereinafter defined), the Earnest Money shall become non-refundable to Buyer (except as otherwise set forth herein in connection with a Seller Default or the failure of a closing condition) and payable to Seller in the event that Buyer does not close on the purchase of the Property. The Earnest Money and any Additional Earnest Money, together with any and all interest earned thereon, shall be deemed a part of the Earnest Money for all purposes under this Agreement.
7. **CLOSING:** Subject to the provisions of this Agreement, the closing of the sale of the Property (the “**Closing**”) shall take place via escrow with the Escrow Agent no later than thirty (30) days after the expiration of the Due Diligence Period, as the same may be extended, or on such earlier

date (which may be prior to or following the expiration of the Due Diligence Period) chosen by Buyer in its sole and absolute discretion, provided that Buyer provides Seller with ten (10) days prior written notice, which day shall be the “**Closing Date.**”

8. **POSSESSION:** The possession of the Property shall be delivered to Buyer on the Closing Date free of all third-party interests except those detailed in any Permitted Exceptions, in its present condition, ordinary wear and tear excepted and damage caused by Buyer’s Examinations and casualty excepted as provided in **Section 10** below.

9. **DUE DILIGENCE PERIOD:**

- A. Buyer shall have ninety (90) days following the later of (i) the Effective Date (the “**Due Diligence Period**”) to conduct such due diligence as Buyer may in its sole judgment desire, including but not limited to engineering studies, surveys, soil tests, environmental assessments, inspections, and other examinations (collectively, “**Examinations**”); and to obtain all necessary development and governmental/quasi-governmental approvals, including but not limited to proper zoning approvals, architectural/aesthetic/visual approvals, development plan approvals, variance of use and/or development standards, annexation, incentives, entitlements, tax abatements, and building permits (collectively, the “**Government Approvals**”) for Buyer’s proposed development of the Property for its intended use.
- B. Buyer’s obligations under this Agreement shall be conditioned upon Buyer’s review and approval, in its sole and absolute discretion, of the Seller Documents (as hereinafter defined) which have previously been delivered to Buyer pursuant to the Letter of Intent and the Property and all aspects thereof, including by way of illustration but not limitation, all physical and environmental matters relating to the Property. If Buyer is not satisfied, in its sole and absolute discretion, that it has been or likely will be able to obtain the Government Approvals, including but not limited to zoning, incentives, and plan commission approvals, or to satisfy the other conditions of this **Section 9**, before expiration of the Due Diligence Period, Buyer may either: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) elect to extend the Due Diligence Period for a maximum of two (2) consecutive thirty (30) day periods (each a “**Due Diligence Extension Period**”). In the event Buyer elects to exercise the first Due Diligence Extension Period, Buyer shall provide Seller with written notice of its election prior to expiration of the Due Diligence Period. In the event Buyer elects to exercise the second Due Diligence Extension Period, Buyer shall provide Seller with written notice of its election prior to the expiration of the first Due Diligence Extension Period.
- C. Upon commencement of the Due Diligence Period and throughout the term of this Agreement, Buyer and its representatives and agents shall have the right to enter upon the Property to perform and complete the activities and investigations set forth herein. The Examinations are to be made at Buyer’s expense, and Buyer shall be liable for any damage (ordinary wear and tear excepted) caused to the Property by Buyer or Buyer’s agents during the Examinations. Further, Buyer agrees to indemnify and hold harmless Seller from and against any damages or claims for injuries to any persons or to the Property that arise as a direct result of the Examinations, except to the extent such damages or claims are caused by or arise from (i) preexisting conditions, (ii) Hazardous Materials not first placed on the Property by Buyer, its agents, or representatives, (iii) mere discovery of existing conditions, facts or circumstances that adversely affect (or may adversely affect) the value

of the Property, or (iv) Seller's or Seller's employees' or agents' negligence or intentional misconduct which adversely affects the value of the Property or results in a third-party claim, which indemnity shall survive the Closing or any earlier termination of this Agreement. Prior to accessing the Property, Buyer and Seller shall execute and deliver a mutually agreeable Access and Indemnification Agreement substantially in the form attached hereto as **Exhibit B** within three (3) days of the Effective Date (the "**Access Agreement**"). Seller agrees to execute any documents reasonably requested by Buyer for any Government Approvals. Seller, or Seller's agent, at no cost to Seller, shall readily and fully cooperate with all due diligence requests and activities to be conducted by or on behalf of Buyer, and with Buyer's efforts to verify and obtain the Government Approvals, including without limitation providing such information, interviews, and documents in the possession of or reasonably accessible to Seller as may be necessary or appropriate.

- D. The purchase of the Property is subject to satisfaction, in Buyer's sole discretion, or waiver by Buyer, within the Due Diligence Period or Due Diligence Extension Period, as applicable, of the condition of the Property, including without limitation, the following conditions:
- (i) There are no encroachments on the Property and the Property does not encroach on any adjacent property.
 - (ii) Seller's title to the Property is good, merchantable, and marketable fee simple title, free and clear of any liens, encumbrances, highways, right-of-way, easements, licenses, restrictions, leases, tenancies, mineral leases, reservations or severances, agreements, covenants, conditions or limitations, except for the lien of then current real property taxes which are not delinquent and those exceptions which Buyer, in its sole discretion, may approve after examination of title and survey as hereinafter provided.
 - (iii) Buyer's determination to its satisfaction that (a) the soil conditions, qualities, density, and bearing capacity of the Property are suitable for Buyer's intended use without the necessity of any extraordinary filling or compaction or any other extraordinary engineering measures or expenditures which, in the sole discretion of Buyer, would render the Property undesirable for Buyer's intended use; and (b) the Property is not located in any area of special flood hazard as designated by the United States Department of Housing and Urban Development, the Federal Emergency Management Agency, or any other federal, state, or local agency, or in any regulated or protected wetlands area.
 - (iv) Buyer obtaining, at Buyer's sole cost and expense, boring, percolation, and/or other soil tests determining the physical characteristics of the sub-strata of the Property and showing that the soil and ground water are not contaminated and that the Property is satisfactory, all in Buyer's sole discretion, for Buyer's intended use. If a Phase I Environmental Site Assessment ("**Phase I**") recommends a Phase II Environmental Site Assessment ("**Phase II**"), then Buyer may, at its sole cost and expense, obtain within thirty (30) days after receipt of the Phase I a Phase II and the Due Diligence Period or Due Diligence Extension Period as applicable (and as the same may be extended pursuant to the foregoing), shall automatically be extended until ten (10) days after Buyer's receipt of the Phase II. Buyer shall be entitled to terminate this Agreement by

written notice to Seller at any time prior to the expiration of the Due Diligence Period or Due Diligence Extension Period, as applicable, if the Phase I or Phase II is not acceptable to Buyer, as determined in Buyer's sole discretion.

- (v) Buyer completing economic, marketing, and any other feasibility studies it deems necessary to determine if the Property is suitable for Buyer's intended use. Buyer shall be entitled to terminate this Agreement by written notice to Seller at any time prior to the expiration of the Due Diligence Period or Due Diligence Extension Period, as applicable, if Buyer deems, in its sole judgment, that the Property is not suitable for Buyer's intended use.
- (vi) That there are no Hazardous Materials (as defined below) present at, on, in, or under the Property and the Property has never been used for any operations or activities which involve generation, manufacture, processing, transportation, treatment, storage, disposal, or handling of any Hazardous Materials.
- (vii) That the Property complies with Environmental Law (as defined below).
- (viii) That there is no underground storage tank(s) at, on, in, or under the Property.
- (ix) That the Property is not subject to any proceeding, claim, liability, action, order, judgment, lien, or listing under any Environmental Law, or the threat or likelihood thereof.
- (x) That the Property be finally and unconditionally zoned for Buyer's intended use with all necessary classifications, variances, permissions, and exceptions required for such intended use. This shall include Buyer obtaining the Government Approvals as well as all easements, reciprocal easement agreements, and any other documents necessary to allow Buyer's intended use of the Property. Buyer shall be responsible for any costs associated with obtaining or drafting such documents.
- (xi) That all permits, consents, approvals, permissions, and other items required or desired by Buyer to be obtained from all federal, state, and local governmental, municipal, public, and other officials, authorities, bodies, and agencies have been obtained, or Buyer has been able to determine to its satisfaction that the same are readily obtainable, in order to permit Buyer's intended use of the Property, including without limitation environmental and ecological approvals and permits from federal, state, and local environmental and natural resources agencies and authorities, if any such approvals or permits are required, subdivision plat approvals, site plan approvals, and permits to connect to all utilities which Buyer desires or requires to service the Property.
- (xii) Buyer completing engineering site analyses of the Property and determining, in its sole discretion, that it is feasible to utilize the Property for its intended use, including provision of storm water management on the Property, and that gas, electricity, cable, telephone, water, storm, and sanitary sewers and other utilities are or will be available to the Property at a reasonable cost and standard rates, and that all such utilities are of sufficient size and capacity for Buyer's intended use of the Property.

- (xiii) Buyer obtaining access to public thoroughfares adequate, in Buyer's sole discretion, for its intended use.
- (xiv) Buyer obtaining any plat approvals and new tax parcel numbers necessary for the development of the Property or the legal conveyance of the Property from Seller to Buyer at Closing.
- (xv) Buyer obtaining equity and financing for the acquisition and proposed development of the Property upon terms reasonably acceptable to Buyer.

The term "**Hazardous Materials**" shall mean any substance or material that is or becomes regulated, defined, or designated by any federal, state, or local governmental authority as hazardous, extremely hazardous, imminently hazardous, dangerous, or toxic, or as a pollutant, contaminant, or waste, and shall include, without limitation, PCBs, lead, mercury, arsenic, volatile organic compounds, asbestos, asbestos containing materials, radioactive materials, oil, and petroleum products and byproducts. The term "**Environmental Law**" shall mean all current and future federal, state, and local statutes, regulations, ordinances, and rules relating to (i) the emission, discharge, leaking, release, or threatened release of Hazardous Materials into the air, surface water, groundwater, or land; (ii) the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a Hazardous Material; or (iii) the protection of human health, safety, or the indoor or outdoor environment, including without limitation the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Occupational Safety and Health Act, all amendments thereto and successors thereof, all regulations promulgated thereunder, and their state statutory and regulatory counterparts.

10. **TAXES:** All real property taxes assessed for any prior calendar year and remaining unpaid, shall be the obligation of Seller, and all taxes assessed for the year of Closing and payable in the following year shall be prorated between Seller and Buyer on a calendar year basis as of the Closing Date. If the taxes for the Property have not been determined at the Closing of the transaction, said taxes shall be assumed to be the same as the prior year for the purpose of such proration and a credit at Closing shall be given to Buyer for taxes not due and payable as of the Closing Date, but accruing prior to the Closing Date.
11. **RISK OF LOSS AND INSURANCE:** Except as otherwise provided in the Access Agreement, Seller shall bear the entire risk of loss of the Property until Closing. Seller's insurance shall be canceled as of the Closing Date, and Buyer shall be responsible for providing its own insurance. In the event any damage or destruction to the Property is not fully repaired prior to Closing, Buyer, at its option, may either (a) terminate this Agreement, or (b) elect to close the transaction, in which event Seller's right to all insurance proceeds resulting from such damage or destruction shall be assigned in writing by Seller to Buyer, and Seller shall reimburse Buyer for any deductible amount.
12. **SURVEY:** Buyer shall obtain, at Buyer's expense, a staked survey, which survey shall comply with Minimum Standard Detail Requirements meeting the current accuracy standards for ALTA/NSPS Land Title Surveys (the "**Survey**"). The Survey shall be certified as of a current date by a surveyor registered in the State of Indiana and shall show the exact location of all improvements, building setback lines, easements, rights-of-way, and encroachments affecting the Property, and all other matters apparent thereon, and the relation of the Property to all adjacent

properties and public thoroughfares. Further, the Survey shall reflect whether the Property is located in a designated flood zone area and shall certify the gross acreage of the Property. The Survey legal description (as well as the historic deed description) of the Property shall be used in Seller's deed conveying the Property to Buyer.

13. **TITLE:** Buyer shall obtain, at Seller's expense, a Commitment for an ALTA Owner's policy of Title Insurance with extended coverage (the "**Commitment**"). Buyer shall deliver to Seller a copy of the Commitment within five (5) days of Buyer's receipt thereof.
14. **TITLE AND SURVEY APPROVAL:** If Buyer has an objection to items disclosed in the Commitment or the Survey (as the same are updated from time to time), Buyer shall make written objections to Seller within thirty (30) days of the date of delivery of all of the Commitment, the recorded documents and the Survey (or applicable update thereof which disclosed additional matters). If no such objections are made, Buyer shall be deemed to have waived all objections to matters disclosed in the Commitment, other than liens of a monetary nature which may be removed by payment of a liquidated sum ("**Permitted Exceptions**"). If Buyer makes such objections, Seller shall have fifteen (15) days from the date such objections are disclosed to cure the same. If the objections are not satisfied within such time period, Buyer may either (a) terminate this Agreement by written notice to Seller prior to Closing and Escrow Agent shall promptly return the Earnest Money to Buyer, or (b) waive the unsatisfied objections (which shall be added to the "**Permitted Exceptions**") and close the transaction in accordance with this Agreement. Any endorsements to the Commitment or the Title Policy requested by Buyer shall be at Buyer's expense.
15. **PRORATIONS AND SPECIAL ASSESSMENTS:** Any and all income and ordinary operating expenses of the Property, including, but not limited to, rent and public utility charges, if any, shall be prorated as of the day before the Closing Date. Any special assessments applicable to the Property for municipal improvements due and payable prior to the Closing Date and which benefit the Property shall be paid by Seller. Buyer will assume and agree to pay all special assessments for municipal improvements which become due and payable on and after the Closing Date. Notwithstanding the foregoing, Buyer shall not be obligated for payments under any management, service or other contractual agreements affecting the Property and the same shall be terminated prior to Closing unless Buyer expressly elects to assume the same.

In the event any adjustments pursuant to this paragraph or **Section 9** are determined to be erroneous, then either party hereto who is entitled to additional monies shall invoice the other party for such additional amounts as may be owing, and such amounts shall be paid within ten (10) days from the receipt of any such invoice; provided that no amounts may be so billed following the expiration of one (1) year after the date of Closing. Nothing contained in this subparagraph shall prevent either party from disputing any claim made by the other party that an adjustment made at Closing was erroneous, so long as such claim is made within one (1) year following Closing.

Seller agrees that, as between Buyer and Seller, Seller shall be responsible for all liabilities, claims, demands and expenses of any kind or nature arising or attributable to the period prior to the Closing Date and which are in any way related to Seller's ownership, maintenance or operation of the Property, and all expenses related thereto ("**Seller's Expenses**"). If Buyer is required by a non-appealable order of a court of competent jurisdiction to pay Seller's Expenses, then Buyer shall have a claim against Seller for Seller's Expenses, and all expenses related thereto, including, but not limited to, court costs and reasonable attorneys' fees. Notwithstanding the foregoing, Seller shall not be responsible for any liabilities, claims, demands and expenses, of any kind or nature arising or attributable to the acts or omissions of Buyer and/or its employees, contractors or agents,

including but not limited to acts and omissions associated with the Examinations.

Buyer agrees, to the extent permitted by Indiana law, to indemnify and hold Seller harmless of and from any and all liabilities, claims, demands and expenses, of any kind or nature, arising or attributable to the period on or subsequent to the Closing Date until Buyer's disposition or other transfer of the Property and which are in any way related to the ownership, maintenance or operation of the Property, including, but not limited to, court costs and attorneys' fees.

16. **SALES EXPENSES:** Seller and Buyer agree that all sales expenses are to be paid in cash prior to or at the Closing.
- A. **SELLER'S EXPENSES:** In addition to the prorations provided in **Sections 9 and 14**, Seller agrees to pay all costs of releasing existing loans and recording the releases; and the following costs: the premium for the Owner's Title Insurance Policy; costs of any endorsements to the Owner's Title Insurance Policy or Mortgagee's Title Policy; the fees of Escrow Agent; taxes accruing as of the Closing Date; and other expenses not stipulated to be paid by Buyer under other provisions of this Agreement.
- B. **BUYER'S EXPENSES:** In addition to the prorations provided in **Sections 9 and 14**, Buyer agrees to pay all expenses incident to any loan obtained by Buyer (e.g. loan commitment fees, preparation of note, mortgage, and other loan documents, recording fees, Mortgagee's Title Policy); the cost of the Survey; any and all closing fees; and other expenses to be paid by Buyer under other provisions of this Agreement.
17. **DEFAULT:** If Buyer breaches this Agreement and is in default (a "**Buyer Default**"), Seller may either (i) waive the Buyer Default and continue Seller's performance under this Agreement, or (ii) terminate this Agreement and receive as its sole remedy the Earnest Money as liquidated damages, in which event Seller shall have no further right or remedy at law or in equity against Buyer. Seller shall have the option, in the event the termination of this Agreement resulting from a Buyer Default, to reimburse Buyer in the amount of Buyer's cost to obtain the Survey in exchange for receipt of the Survey. In the event that Seller fails to timely comply with all conditions, covenants and obligations hereunder, or if any of the representations and warranties of Seller contained herein are untrue either when made or become untrue any time thereafter, or if Seller otherwise breaches this Agreement, such failure or misrepresentation shall be an event of default by Seller (a "**Seller Default**"), then, notwithstanding any other provision of this Agreement to the contrary at Buyer's option (i) the Earnest Money shall be promptly returned to Buyer, Seller shall reimburse Buyer in the amount of Buyer's cost to obtain the Survey (which shall be delivered to Seller upon Buyer's receipt of such reimbursement) and this Agreement shall be terminated, or (ii) Buyer may seek specific performance, and in either of such events, Buyer shall have no further right or remedy at law or in equity against Seller.
18. **ATTORNEY'S FEES:** Any party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party brought for a breach of this Agreement shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.
19. **ESCROW:** The Earnest Money shall be deposited with Escrow Agent with the understanding that (a) Escrow Agent is not a party to this Agreement and does not assume or have any liability for performance or non-performance of any party and (b) before the Escrow Agent has any obligation to disburse the Earnest Money in the event of dispute, it has the right to require from all signatories

a written release of liability of the Escrow Agent, termination of the Agreement and authorization to disburse the Earnest Money, all as shall be set forth in a written escrow agreement with Escrow Agent. At Closing, the Earnest Money shall be applied to the Purchase Price.

20. DUTIES OF BUYER AND SELLER AT CLOSING:

A. At the Closing, Seller shall deliver to Buyer, the following:

- (1) A duly executed and acknowledged General Warranty Deed conveying to Buyer or its designee good, marketable, and indefeasible title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, reservations and restrictions, subject only to the Permitted Exceptions;
- (2) A duly executed and acknowledged Vendor's Affidavit in a form acceptable to Buyer and Title Company;
- (3) An Owner's Title Insurance Policy, with extended coverage, including all endorsements requested by Buyer (the "Title Policy") issued by Title Company, in the full amount of the Purchase Price, dated as of Closing, insuring Buyer's fee simple title to the Property to be good, marketable, and indefeasible, subject only to the Permitted Exceptions;
- (4) Evidence of its capacity and authority for the closing of this transaction;
- (5) A certification establishing that no federal income tax is required to be withheld under the Foreign Investment and Real Property Tax Act;
- (6) An executed Indiana Disclosure of Sales Information form complying with I.C. 6-1.1-5.5;
- (7) A quit-claim bill of sale and general assignment conveying any development rights or other intangible property in connection with the Property, if any;
- (8) A duly executed Closing Statement; and
- (9) All other necessary documents reasonably requested by Buyer to close this transaction.

B. At the Closing, Buyer shall deliver and perform the following:

- (1) Pay the Purchase Price in the form of readily available funds;
- (2) Execute a Closing Statement;
- (3) Provide evidence of its capacity and authority for the closing of this transaction, if required by the Title Company;
- (4) Execute a counterpart of the Indiana Disclosure of Sales Information form; and

- (5) Execute all other necessary documents reasonably requested by Seller to close this transaction.

21. **CONDEMNATION:** If prior to Closing, condemnation proceedings are commenced against any portion of the Property or Seller receives notice of a proposed taking prior to Closing, Seller shall immediately notify Buyer of such notice or taking and Buyer shall have the option of either (i) terminating this Agreement by written notice to Seller within fifteen (15) days after Buyer's receipt of said notice, whereupon, notwithstanding any other provision of this Agreement to the contrary, all Earnest Money shall be immediately refunded to Buyer and this Agreement and all rights and obligations created hereunder shall be of no further force or effect; or (ii) requiring Seller to convey the Property, or such portion thereof as Buyer desires, to Buyer pursuant to the terms and provisions hereof and to transfer and assign to Buyer at Closing all of Seller's right, title, and interest in and to any award or other payment made or to be made by reason of such condemnation. Seller and Buyer hereby further agree that Buyer shall have the right to participate in all negotiations with any such governmental authority related to the condemnation of the Property.

22. **DOCUMENTS FROM SELLER:** Seller shall provide Buyer, within ten (10) business days following the Effective Date, copies of the following documents or information relating to the Property, if in Seller's possession (the "**Seller Documents**"):

- A. Prior title insurance policies, title commitments, title exception documents, vesting deeds, plats, and surveys.
- B. All environmental documents, including but not limited to prior environmental reports.
- C. All building plans, construction contracts, permits, and zoning approvals.
- D. Evidence of the location and capacity of all utilities, including but not limited to water, sanitary, electric, gas, telephone, and cable.
- E. Unrecorded leases (including farm leases), easements, and encumbrances, if any.
- F. Evidence of any third-party mineral interests.
- G. Any other documents or reports relating to the Property and any other documents, materials, or information requested by Buyer.

23. **REPRESENTATIONS AND WARRANTIES OF SELLER:** To induce Buyer to execute this Agreement, Seller represents, warrants and covenants to Buyer as follows:

- A. Seller has the full capacity, right, power and authority to execute, deliver, and perform this Agreement and all documents to be executed by Seller pursuant hereto, and all required actions and approvals have been taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto. This Agreement and all documents to be executed pursuant hereto by Seller are and shall be valid, binding upon and enforceable against Seller in accordance with their respective terms.

- B. No action, suit, claim, arbitration, litigation, or other proceedings is pending or threatened against Seller or related to the Property or any part thereof.
- C. Seller is not involved in any proceedings by or against Seller in any court under the Bankruptcy Code, or any other insolvency or debtor's relief law, whether federal or state, or for the appointment of a trustee, receiver, liquidator, assignee, or other similar official of Seller or a substantial part of Seller's property.
- D. Seller has not received any notification from any governmental agency, authority, or any utility, of any pending or threatened claims, condemnations, planned public improvements, annexation, special assessments, rezoning, or other adverse claims affecting the Property or any part thereof or any proposed increases in the cost of utility services.
- E. Seller will not create, permit, or suffer any lien or other encumbrance to attach to or affect the Property, other than the lien of non-delinquent real estate taxes. On the Closing Date, there will be no liens and/or unpaid claims of contractors, materialmen, or laborers which could give rise to a lien against the Property, and there will be no mortgages or security interests against the Property.
- F. Seller has good and marketable fee simple title to the Property, free and clear of all liens, security interests, encumbrances, recorded and unrecorded leases, service contracts, and restrictions of every kind and description, except the Permitted Exceptions and liens and encumbrances to be released on the Closing Date. There is no offer, option to purchase, right of first offer, or right of first refusal for the sale or lease of all or any portion of the Property.
- G. Except for certain farm leases previously disclosed to Buyer, there are no persons or entities in possession or occupancy of the Property or any part thereof other than Seller, nor are there any other persons or entities who have possessory or other rights with respect to or interests in the Property or any part thereof. Seller has the right to, and at or prior to Closing will, terminate any farm leases on the Property at its cost and expense. Buyer will have no obligation to pay crop damages to any party. From the date of execution of this Contract through the date of Closing, Seller will not enter into any lease of any portion of the Property.
- H. To Seller's knowledge, no Hazardous Materials have been used, generated, manufactured, stored, treated, released, or disposed of at, in, on, or under the Property.
- I. Except as may be disclosed in the environmental reports previously delivered by Seller to Buyer, to Seller's knowledge, the Property complies with Environmental Law and Seller has received no other notices to the contrary.
- J. To Seller's knowledge, there are no soft soils, underground storage tanks, or subsurface materials which would increase the cost to develop the Property.
- K. From the date of execution of this Contract through the date of Closing, Seller shall continue to maintain the Property in its present condition, and shall not, subject to any activities conducted on the Property by Buyer pursuant to the Access

Agreement, alter any portion of the Property in any material respect or construct any material improvements to the Property.

- L. From the date of execution of this Contract through the date of Closing, Seller will not enter into any oral or written agreements affecting the Property which might become binding on Buyer or the Property at or after Closing.
- M. To Seller's knowledge, the Property complies with all applicable laws and ordinances, and the present maintenance, operation and use of the Property does not violate any environmental, zoning, subdivision, building or similar law, ordinance, code, regulation or governmental permit affecting the Property, and Seller shall provide to Buyer promptly following Seller's receipt, written notice of alleged material violations of applicable law with respect to the Property received by Seller from and after the Effective Date.
- N. Seller has no employees or employment agreements or collective bargaining agreements at the Property for which Buyer will be responsible after closing. Seller is not a "foreign person" as defined by the Internal Revenue Code (the "Code"), Section 1445.
- O. Seller is not in violation of any legal requirements, now or hereafter in effect, relating to money laundering, anti-terrorism, trade embargoes and economic sanctions, including, without limitation, Executive Order 13224 (as defined below) and the Patriot Act (as defined below). Seller (i) is not (a) a Blocked Person (as defined below) or (b) owned, in whole or in part, directly or indirectly, by any Blocked Person; and (ii) does not (a) conduct any business or engage in any transaction or dealing with a Blocked Person or (b) deal in, or otherwise engage in, any transaction or dealing relating to any property, or interests in property, blocked pursuant to Executive Order 13224. As used herein, (i) "Blocked Person" is defined as any individuals or entities which (a) are owned or controlled by, or acting on behalf of, the governments of countries currently listed under section 6(j) of the Export Administration Act as supporting international terrorism, or (b) are owned or controlled by, are acting on behalf of, or are associated with, international terrorism, as indicated by their listing on the Treasury Department's Specially Designated Nationals and Blocked Persons, as updated from time to time; (ii) "Executive Order 13224" is defined as Executive Order Number 13224, "Blocking Property Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism," 66 Fed. Reg. 49079 (Sept. 23, 2001); and (iii) "Patriot Act" is defined as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272

The foregoing representations are true, correct, and complete, and the foregoing warranties are in full force and effect and binding on Seller, as of the Effective Date of this Agreement, and shall be true and correct and in full force and effect, and deemed to have been reaffirmed and restated by Seller as of the Closing Date, shall survive Closing, shall not be deemed merged into any instrument of conveyance delivered at Closing, and shall inure to the benefit of and be enforceable by Buyer and its successors and assigns.

Except as provided below, the representations and warranties contained in this **Section 22**

will survive for twelve (12) months after the Closing Date, and will thereafter terminate, together with any claims under or remedies associated with **Section 14**, above. The representations and warranties contained in these **Subsections 23(A) and (C)** will survive indefinitely.

24. Intentionally omitted.

25. MISCELLANEOUS:

- A. Any notice or demand required or permitted to be given under this Agreement or by law shall be in writing and deemed to have been duly given (a) on the date of delivery of such notice, if delivered in person by the sending party (or its agent), (b) on the date an electronic mail containing such notice is sent (provided that a duplicate copy is sent contemporaneously by one of the other methods described in this **Section 25(A)**, (c) on the next business day following the date such notice is deposited with a nationally recognized overnight delivery service, or (d) three business days following mailing, if such notice is sent via United States mail, postage prepaid and certified with return receipt requested, in each case to the appropriate address(es) set forth below (or to such other address as a party may designate from time to time by notice to the other party):

Seller: Tom Schmucker Construction, LP
Attn: Tom Schmucker
10512 Schwartz Rd
Fort Wayne, IN 46835

With a copy to:

RealtyFlex of N.E. Indiana LLC
Attn: David Augustyniak
6315-C Mutual Dr
Fort Wayne, IN 46825
david@realtyflex.com

Buyer: City of Fort Wayne
Attn: Chris Carmichael
200 E Berry St, Suite 470
Fort Wayne, IN 46802
christopher.carmichael@cityoffortwayne.org

With a copy to:

City of Fort Wayne Law Department
Attn: Lawrence Shine
200 East Berry Street, Suite 430
Fort Wayne, IN 46802

- B. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and the jurisdiction and venue with respect to any disputes arising hereunder will be proper only in the city or county in which the Property is located.

- C. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and assigns. Buyer may, without the consent of Seller, assign its rights under this Agreement to a third party at any time on or before the Closing Date.
 - D. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
 - E. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the transaction and cannot be changed except by their written consent.
 - F. Time is of the essence of this Agreement.
 - G. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa unless the context requires otherwise.
 - H. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement. The parties agree that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.
 - I. The provisions of this Agreement and of the documents to be executed and delivered at the Closing are and will be for the benefit of Seller and Buyer (and Buyer's assigns, if any) only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at the Closing.
 - J. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.
 - K. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Agreement falls on a Saturday, Sunday or federal legal holiday, then such date will be extended to the next following date which is not a Saturday, Sunday or federal legal holiday.
26. **PROFESSIONAL FEES:** Each Party shall warrant to the other that no real estate brokers or other intermediaries are involved in connection with the transaction except RealtyFlex of N.E. Indiana, LLC which represents the Seller and whose commission shall be paid by Seller at Closing.
27. **CONFIDENTIALITY:** Buyer and Seller shall maintain the confidentiality of all documents supplied to or obtained by Buyer in connection with its due diligence of the Property, and any related documents, subject to disclosure on a "need to know" basis to attorneys, clients, potential lenders, actual lenders, equity investors, accountants, architects, appraisers, engineers, contractors, consultants, tenants, and potential tenants, as required by applicable law or judicial process, or as required to be provided to governmental and quasi-governmental bodies, agencies, and employees

in connection with any entitlement or other processes in which Buyer engages with respect to its inspection of the Property. The parties expressly confirm that this confidentiality provision is an essential and material term of this Agreement that is intended to be enforceable by any remedies available at law or equity, including injunctive relief.

28. **EXCLUSIVE RIGHTS:** Seller and Seller's agents shall refrain from all further marketing efforts for the Property and shall not accept or entertain offers, negotiate, solicit interest, or otherwise enter into discussions involving the sale, recapitalization, restructuring, or disposition of all or any part of the Property, until the termination of this Agreement.
29. **JUDICIAL INTERPRETATION:** Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not construe this Agreement against one party more strictly by reason of the rule of interpretation that a document is to be construed more strictly against the party that prepared the same, it being agreed that the agents of each party have participated in the preparation of this Agreement and that each party thereto consulted with independent legal counsel of its own selection or had the opportunity to consult with such legal counsel prior to the execution of this Agreement.
30. **WAIVER OF CONSEQUENTIAL DAMAGES.** Notwithstanding any provision in this Agreement to the contrary, neither party will be liable to the other party for consequential damages, such as lost profits or interruption of the other party's business, except that this sentence will not apply to Seller's breach of its confidentiality obligations under this Agreement.
31. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER AND BUYER WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN OR AMONG SELLER AND BUYER ARISING OUT OF THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.
32. **ANTI-CORRUPTION.** Seller will not knowingly permit anyone to pay bribes to anyone for any reason, whether in dealings with governments or the private sector, or otherwise violate any applicable anti-corruption laws in performing under this Agreement. Seller will maintain true, accurate and complete books and records concerning any payments made to another party by Seller under this Agreement, including on behalf of Buyer. Buyer and its designated representative may inspect Seller's books and records to verify such payments and for the compliance with this **Section 32.**

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

SELLER:

Tom Schmucker Construction, LP

By: Tom Schmucker

Printed: Tom Schmucker

Title: manager

BUYER:

City of Fort Wayne, Indiana

By: Chris Carmichael

Printed: Christopher Carmichael

Title: Property Manager

Exhibit A

4820 E State Blvd, Fort Wayne, IN 46815

Legal Description: Lots Numbered 1, 2, and 3 in Statewood Park, Section A, an addition to the City of Fort Wayne, according to the plat thereof, recorded in Plat Record 17, page 120, in the Office of the Recorder of Allen County, Indiana, except the north 10 feet thereof conveyed to the City of Fort Wayne in Document Numbers 85-32475, 86-004186, and 86-004602.



Exhibit B

Form of Access Agreement

[To be attached]

ACCESS AND INDEMNIFICATION AGREEMENT

This Access and Indemnification Agreement (this "Agreement") is entered into as of this 23 day of June, 2021 by and between TOM SCHMUCKER CONSTRUCTION, L.P. ("Owner") and the CITY OF FORT WAYNE, INDIANA ("City").

RECITALS

A. WHEREAS, Owner is the owner in fee of that certain real property described in Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. WHEREAS, Owner has granted City permission to enter onto the Property, on a temporary basis, for the purpose of conducting certain Examinations of the Property pursuant to and as defined in that certain Real Estate Purchase Agreement entered into by Owner and City on 6-23, 2021 (the "Purchase Agreement"), a copy of which is attached hereto and incorporated herein by reference as Exhibit B.

C. WHEREAS, the Parties wish to enter into this Agreement whereby the Owner will allow City to enter the Property, on a temporary basis, for the purpose of conducting the Examinations as more particularly described in the Purchase Agreement.

NOW, THEREFORE, the Owner and City do hereby agree as follows:

AGREEMENT

1. Right of Access. The Owner hereby grants to City and its agents, employees, contractors and subcontractors the temporary right to enter upon the Property for the purpose of conducting the Examinations pursuant to the Purchase Agreement (the "Right of Access").

2. Term. The term of this Agreement, together with any extensions thereof, is set forth in Section 9 of the Purchase Agreement, unless earlier terminated as provided herein.

3. Indemnification. City hereby agrees to indemnify, defend, assume all liability for and hold harmless Owner and its officers, employees, members, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities, damages to property, injuries or death of persons, which are caused solely and directly by City's conducting of the Examinations on the Property during the Term, unless such actions, claims, suits, penalties, obligations, liabilities, damages to property, or injuries or death to persons results from the negligence or willful misconduct of Owner or a third party. City will at all times maintain commercially reasonable insurance coverage to cover its potential indemnity obligations under this Agreement. Owner and City agree that City

shall not be liable for, and is hereby released from, any and all claims, damages, losses, judgments, suits, actions and liabilities, whether arising during, prior to or subsequent to the date of this Agreement, related to the presence of Hazardous Substances (as defined below) or endangerments in, on, or under the Property, except to the extent caused by the acts or omissions of City or its representatives, contractors, subcontractors or agents. For purposes of this Section, the following terms have the following meanings: (a) "Hazardous Substances" mean and include (a) any friable asbestos, or asbestos containing material, PCBs, dioxins and urea formaldehyde foam insulation; (b) any petroleum products; (c) any waste, substance, material, pollutant or contaminant defined as hazardous or toxic in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation Recovery Act, as the same may heretofore or hereafter be amended; and (d) any waste, substance, material, pollutant or contaminant (i) defined as hazardous or toxic in (or for purposes of) any other Environmental Laws (as defined below) now or at any time hereafter in effect or (ii) the presence, disposal, release or threatened release of which on, onto or from any premises (including the Property Area) is governed by any other applicable Environmental Laws. (b) "Environmental Laws" mean all federal, state and local laws, ordinances, rules and regulations now or at any time hereafter in effect which regulate, relate to or impose liability or standards of conduct concerning any Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act. This provision shall survive the termination or expiration of this Agreement.

4. Compliance with Laws/Permits. City shall, in all activities undertaken pursuant to this Right of Entry, comply and cause its contractors, subcontractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, City at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities City desires to conduct pursuant to this Agreement.

5. Restoration of the Property. Upon the termination or revocation of this Agreement, City shall, at its own cost and expense, restore the Property to substantially the same condition in which the Property existed prior to City's entry upon the Property.

6. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written above.

TOM SCHMUCKER CONSTRUCTION,
L.P.

By: 
Tom Schmucker
General Partner

CITY OF FORT WAYNE, INDIANA

By: 
Christopher Carmichael
Property Manager

EXHIBIT "A"

DESCRIPTION OF PROPERTY

Legal Description: Lots Numbered 1, 2, and 3 in Statewood Park, Section A, an addition to the City of Fort Wayne, according to the plat thereof, recorded in Plat Record 17, page 120, in the Office of the Recorder of Allen County, Indiana, except the north 10 feet thereof conveyed to the City of Fort Wayne in Document Numbers 85-32475, 86-004186, and 86-004602.

Commonly Known As: 4820 E State Blvd, Fort Wayne, IN 46815



EXHIBIT "B"

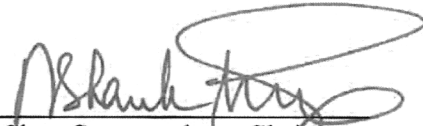
REAL ESTATE PURCHASE AGREEMENT

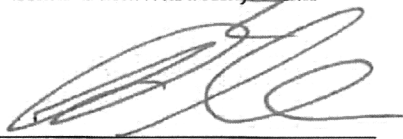
Property Mgmt 8-17-21

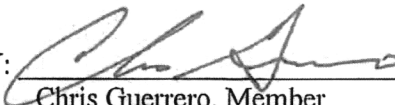
Approval of Purchase Agreement of 4820 E State Blvd between the City of Fort Wayne and Tom Schmucker Construction LP for \$279,000.00.

BOARD OF PUBLIC WORKS

Date: 8-17-21

BY: 
Shan Gunawardena, Chair

BY: 
Kumar Menon, Member

BY: 
Chris Guerrero, Member

ATTEST: 
Michelle Fulk-Vondran, Clerk

**APPRAISAL REPORT
AN UNIMPROVED 1.27 ACRE COMMERCIAL LAND TRACT
4820 EAST STATE BOULEVARD
FORT WAYNE, INDIANA 46815**

**CURRENT OWNER:
TOM SCHMUCKER CONSTRUCTION LP**

**PREPARED FOR:
CITY OF FORT WAYNE
CITIZENS SQUARE BUILDING
200 EAST BERRY STREET
SUITE 470
FORT WAYNE, INDIANA 46802**

**PREPARED BY:
VERNE V. MITCHELL, III, MAI
INDIANA CERTIFIED GENERAL APPRAISER
LICENSE NUMBER CG69100097
AND
ALEXANDER C. MITCHELL
INDIANA APPRAISER TRAINEE
LICENSE NUMBER TR41400023**

**VALUATION DATE:
JULY 25, 2021**

**Verne V. Mitchell & Associates, Inc.
Real Estate Appraisal Services**

Verne V. Mitchell & Associates, Inc.
Real Property Appraisal Services

Verne V. Mitchell, III, MAI

July 29, 2021

Mr. Christopher Carmichael
Property Manager
City of Fort Wayne
Citizens Square Building
200 East Berry Street
Suite 470
Fort Wayne, IN 46802

RE: Appraisal of: An Unimproved 1.27 Acre Commercial Land Tract
4820 East State Boulevard
Fort Wayne, IN 46815

Current Owner: Tom Schmucker Construction LP

Dear Mr. Carmichael:

Responding to your request, we have appraised the above referenced property which is located at the southeast corner of the intersection of Reed Road and East State Boulevard in the northeast quadrant of Fort Wayne, Allen County, Indiana. The purpose of this appraisal is to form an opinion of the market value of the property's fee simple estate. Uniform Standards of Professional Appraisal Practice (USPAP) have been applied in preparing this appraisal. Assumptions and Limiting Conditions and Extraordinary Assumptions are applied in developing this appraisal. This letter of transmittal is considered part of the appraisal report.

The property was viewed multiple times, the most recent viewing taking place on July 25, 2021. This is the effective valuation date. The analysis in this report was completed by July 28, 2021. The highest and best use of the property is for a commercial usage.

Our opinion of the market value of subject property is:

TWO HUNDRED EIGHTY THOUSAND DOLLARS
(\$280,000)

If you should have any questions, please advise. Thank you for allowing us to be of service to you.

Respectfully submitted,

VERNE V. MITCHELL & ASSOCIATES, INC.



Verne V. Mitchell, III, MAI
Indiana Certified General Appraiser
License Number CG69100097



Alexander C. Mitchell
Indiana Appraiser Trainee
License Number TR41400023

VVM/ms

Appraisal Valuation

Of

CITY OF FORT WAYNE LAND TRACT

Located at

**4820 East State Boulevard
(Southeast Corner of East State Boulevard and Reed Road)**

Fort Wayne, Allen County, Indiana

For

**City of Fort Wayne c/o Christopher Carmichael
Christopher.Carmichael@cityoffortwayne.org**

As Of

**July 2, 2021
(Date of Inspection)**

By

Matthew A. Griffin, MAI
Indiana Certified General Appraiser
License No. CG40200215

Griffin Real Estate Services, Inc.
229 West Berry Street, Suite 320
Fort Wayne, Indiana 46802

GRIFFIN REAL ESTATE SERVICES, INC.

229 West Berry Street, Suite 320

Fort Wayne, IN 46802

July 14, 2021

Christopher Carmichael
City of Fort Wayne

Regarding: Appraisal Valuation of Schmucker Land Tract Located at 4820 East State
Boulevard, Fort Wayne, Allen County, Indiana

As you requested, I personally inspected the above-referenced property for appraisal purposes. The subject property is a bare land tract located at the southeast corner of East State Boulevard and Reed Road. The opinion of market value being provided is for the fee simple estate interest.

This appraisal report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the 2020-2021 Uniform Standards of Professional Appraisal Practice (USPAP). This report is being completed based on the Scope of Work detailed on page 13 of this report. I am not responsible for unauthorized use of this report.

After researching and analyzing the available information considered pertinent to value, and giving consideration to its effect on value, I am of the opinion that the subject land tract had the following fee simple estate market value as of the date of inspection on July 2, 2021:

TWO HUNDRED SEVENTY-NINE THOUSAND DOLLARS (\$279,000)

Extraordinary Assumption(s)

This term is defined on page 4 in the Uniform Standards of Professional Appraisal Practice 2020-2021 Edition, published by The Appraisal Foundation, as, "*An assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions.*" There are no extraordinary assumptions made in this valuation.

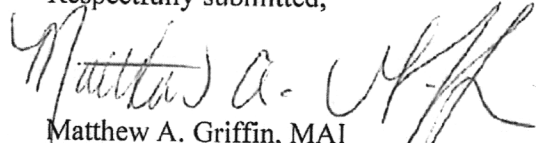
Hypothetical Condition(s)

This term is defined on page 4 in the Uniform Standards of Professional Appraisal Practice 2020-2021 Edition, published by The Appraisal Foundation, as, "*A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for purpose of analysis.*" There are no hypothetical conditions made in this valuation.

The accompanying report contains a description of the property and includes the methods employed in arriving at an opinion of the fee simple market value for the subject property. The property rights appraised are all those rights included in the fee simple title to the real estate. This letter in itself is not an appraisal valuation; however, it is considered to be a part of the valuation which follows.

I do hereby certify that to the best of my knowledge and beliefs, the statements and opinions contained in this report are correct, subject to the assumptions and limiting conditions herein set forth. I also certify that I have no present or contemplated interest in the property or parties involved or in any other property that could affect the conclusions reached.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew A. Griffin". The signature is written in a cursive style with a large, stylized initial "M".

Matthew A. Griffin, MAI
Indiana Certified General Appraiser
License No. CG40200215

kaf

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs, BIDS, OTHER PROJECTS

Bid/RFP#/Name of Project	Purchase Agreement between City of Fort Wayne and Tom Schmucker Construction LP for a property located at 4820 E State Blvd in St. Joseph Township, Allen County, Indiana
Awarded To	Tom Schmucker Construction LP
Amount	\$279,000.00
Conflict of interest on file?	N/A
Number of Registrants	N/A
Number of Bidders	N/A
Required Attachments	

EXTENSIONS

Date Last Bid Out	N/A
# Extensions Granted To Date	

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	Purchase Agreement between City of Fort Wayne and Tom Schmucker Construction LP for a property located at 4820 E State Blvd in St. Joseph Township, Allen County, Indiana
Sole Source/Compatibility Justification	N/A

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	No <i>If no, explain below</i>
If not lowest, explain	N/A

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	N/A
--	-----

DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	City acquiring real estate to relocate Fire Station 14 to this location.

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	N/A

FUNDING SOURCE

<i>Account Information.</i>	Cumulative Capital Funds



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

September 3, 2021

City Council Members
City of Fort Wayne

RE: City of Fort Wayne/Tom Schmucker Construction LP Purchase Agreement 4820 E State Blvd

Dear Council Members:

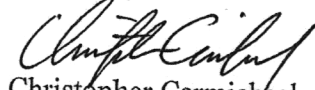
The City has entered into a Purchase Agreement to acquire property at 4820 E State Blvd in St. Joseph Township, Allen County, Indiana. A copy is attached.

The City of Fort Wayne Board of Public Works has approved this acquisition.

We are asking for Council to approve this acquisition.

If you have any questions on the above, please feel free to contact me at 427-2317.

Sincerely,


Christopher Carmichael
Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

200 E. Berry St. • Fort Wayne, Indiana • 46802 • www.cityoffortwayne.org
An Equal Opportunity Employer

Public Hearing Date: N/A

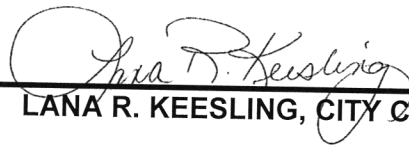
Read the first time in full and on motion by Councilperson Hines.

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

Read the third time in full and on motion by Councilperson Hines, 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 checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input 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"/>

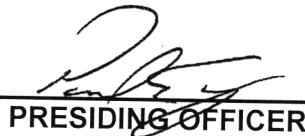
DATED: September 28, 2021


LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
Resolution No. R-21-09-05 on the 28th day of September, 2021

ATTEST:

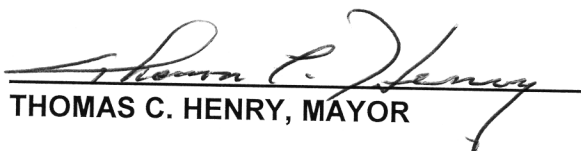

LANA R. KEESLING
CITY CLERK

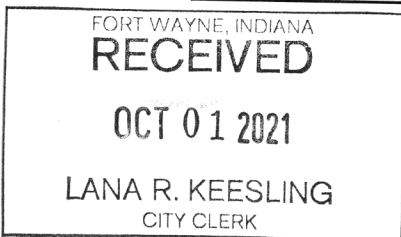

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 29th
of September 2021, at the hour of 11:20 o'clock A.M. E.S.T.


LANA R. KEESLING, CITY CLERK

Approved and signed by me this 30th day of September 2021, at the
hour of 12:00 o'clock PM E.S.T.


THOMAS C. HENRY, MAYOR



BILL NO. R-21-09-05

REPORT OF COMMITTEE ON FINANCE

September 28, 2021

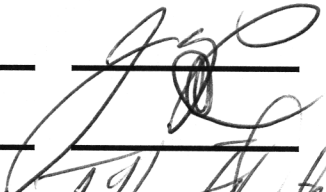
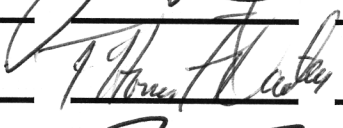

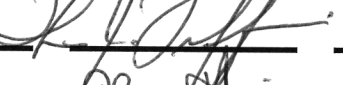
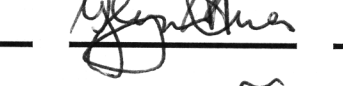
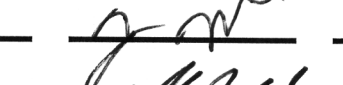
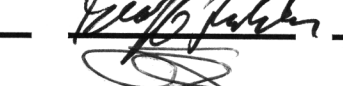

Glynn Hines Chair

Jason Arp Co-Chair

All Council Members

A Resolution Approving the purchase of certain real estate located at 4820 E. State Blvd., St. Joseph Township, Fort Wayne, Indiana, for the City of Fort Wayne - Involving a total cost of \$279,000.00

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>
<u>ARP</u>			
<u>CHAMBERS</u>			
<u>DIDIER</u>			
<u>ENSLEY</u>			
<u>FREISTROFFER</u>			
<u>HINES</u>			
<u>JEHL</u>			
<u>PADDOCK</u>			
<u>TUCKER</u>			

**LANA R. KEESLING
CITY CLERK**

