

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, APPROVING THE USE OF LOCAL INCOME TAX LEASE REVENUE BOND PROCEEDS FOR ACQUISITION BY THE FORT WAYNE REDEVELOPMENT COMMISSION OF REAL ESTATE ASSOCIATED WITH THE PEPSI WAREHOUSE FACILITY ON NORTH HARRISON STREET.

WHEREAS, the City of Fort Wayne Redevelopment Commission (“Commission”) is interested in acquiring approximately 6.43 acres of real estate owned by P-Americas, LLC, (“Pepsi”) including the warehouse located at 1207 North Harrison Street and other associated parcels, as more particularly depicted on Exhibit A, attached hereto (the “Real Estate”); and

WHEREAS, Pepsi has agreed to convey the Real Estate to the Commission for a purchase price of Four Million Five Hundred Thousand Dollars (\$4,500,000) and other valuable consideration (the “Purchase Price”) as described in the Real Estate Purchase Agreement (the “Purchase Agreement”), attached hereto as Exhibit B; and

WHEREAS, the Commission has requested approval for the expenditure of certain proceeds from the local income tax lease revenue bonds issued for Phase II of Riverfront (the “Phase II Bonds”) in the amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) for the acquisition of the Real Estate pursuant to the Purchase Agreement; and

WHEREAS, the Common Council has determined that acquisition of the Real Estate will provide substantial community benefits in that: (i) the Real Estate is within the planning area of the Riverfront Development Implementation Framework and

1 is among the most strategically-located and valuable sites in the community, (ii)
2 redevelopment of the site will bring more people, businesses, and vibrancy to north side
3 of the river, (iii) new pedestrian-oriented development will improve connectivity
4 between the riverfront, the Wells Street Corridor and the Bloomingdale Neighborhood,
5 and (iv) redevelopment of the site will protect substantial public investments in
6 Promenade Park and other nearby projects
7

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

10 1. The Common Council finds, determines, ratifies and confirms that
11 the acquisition of the Real Estate is in the best interests of the citizens and taxpayers of
12 the City of Fort Wayne, will support the redevelopment goals and objectives of the City
13 of Fort Wayne, and will support the ongoing riverfront development goals previously
14 approved and authorized for the area.
15

16 2. The Common Council does hereby approve payment of the
17 Purchase Price in the amount of Four Million Five Hundred Thousand and No/100
18 Dollars (\$4,500,000.00) plus reasonable and customary closing costs, pursuant to the
19 Purchase Agreement.
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21 3. Payment of the Purchase Price shall be made from proceeds from
22 the Phase II Bonds. If the Phase II Bonds have not been issued as of the date of the
23 closing of the Real Estate, the Purchase Price shall be drawn from other available LIT
24 Riverfront revenues, which revenues shall be promptly reimbursed from proceeds from
25 the Phase II Bonds upon issuance of the Phase II Bonds.
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4. This Resolution shall be in full force and effect from and after the time it has been adopted by Common Council, approved by the Mayor and otherwise executed and delivered in accordance with any and all laws appertaining thereto.



Council Member

APPROVED AS TO FORM AND LEGALITY:



Malak Heiny, City Attorney

EXHIBIT A

THE "REAL ESTATE"



MAP REFERENCE #	PIN
1	02-12-02-136-008.000-074
2	02-12-02-181-005.000-074
3	02-12-02-181-006.000-074
4	02-12-02-181-010.000-074
5	02-12-02-181-013.000-074
6	02-12-02-181-016.000-074
7	02-12-02-181-021.000-074
8	02-12-02-204-003.000-074
9	02-12-02-184-001.000-074
10	02-12-02-184-002.000-074

EXHIBIT B

THE "PURCHASE AGREEMENT"

(see following page)

REAL ESTATE PURCHASE AGREEMENT

1. This Real Estate Purchase Agreement (“**Agreement**”) is made to be effective the ____ day of _____, 2022 (the “**Effective Date**”), by and among P-Americas, LLC, a Delaware limited liability company, successor-by-merger to Pepsi-Cola General Bottlers of Indiana, Inc., f/k/a RKO Bottlers of Fort Wayne, Inc. (“**Seller**”) and The City of Fort Wayne, Department of Redevelopment, acting by and through the Fort Wayne Redevelopment Commission (“**Buyer**”).
2. **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 ten (10) tax parcels, 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 any and 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**”).
3. **PRICE:** The net purchase price for the Property (the “**Purchase Price**”) shall be Four Million, Five Hundred Thousand and 00/100 Dollars (\$4,500,000.00). 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.
4. **EARNEST MONEY:** Fifty Thousand and 00/100 Dollars (\$50,000.00) will be deposited by Buyer, as “**Earnest Money**,” with Titan Title Services, LLC, Attn: Andrew Wartenbe, as “**Escrow Agent**,” within ten (10) days of the Effective Date. If this Agreement is terminated by Buyer prior to the expiration of the Due Diligence Period (as defined in **Section 7** herein), or pursuant to a Seller Default (as hereinafter defined), the Earnest Money shall be immediately returned to Buyer. The term “**Earnest Money**” shall include any interest thereon. The Earnest Money shall be applied as a credit towards the Purchase Price at Closing. Upon expiration of the Due Diligence Period, and provided that this Agreement has not been terminated by Buyer, 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).
5. **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 thirty (30) days after Seller, as Lessee, takes delivery of the leased premises to be located at 4433 Gulfstream Way, Fort Wayne, Indiana 46809 (the “**Leased Premises**”), pursuant to the terms of that certain Industrial Lease dated _____, 2022, by and between, ET Fort Wayne IV, LLC, as Lessor, and Seller, as Lessee (the “**Lease Agreement**”) or such earlier date (which may be prior to or following the expiration of the Due Diligence Period) as chosen by the mutual agreement of the parties (the “**Closing Date**”). Notwithstanding anything contained herein to the contrary, the Closing Date shall be no later than October 31, 2023 (the “**Outside Closing Date**”). In the event the Leased Premises have not been delivered to Seller by the Outside Closing Date, then Seller shall be entitled to remain in occupancy the Property pursuant to the terms of a mutually agreed upon month-to-month lease (the “**Holdover Lease**”), which Holdover Lease shall be negotiated in good faith between the parties, be for a term of no greater than six (6) months, and contain such usual and customary commercial terms as are appropriate under the circumstances.

6. **POSSESSION:** The possession of the Property shall be delivered to Buyer on the Closing Date free of all third-party interests, in its present condition, ordinary wear and tear excepted and damage caused by Buyer's Examinations and casualty excepted as provided in **Section 9** below.

7. **DUE DILIGENCE PERIOD:**

- A. Buyer shall have ninety (90) days following the later of (i) the Effective Date and (ii) Buyer's receipt of the Seller Documents (as defined below) (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 review title and survey.
- 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) and the Property and all aspects thereof, including by way of illustration but not limitation, all physical and environmental matters relating to the Property.

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.

Buyer shall provide Seller with a copy of any Phase I Environmental Site Assessment it receives in connection with the Examinations.

- C. The purchase of the Property is subject to satisfaction, in Buyer's sole discretion, or waiver by Buyer, within the Due Diligence Period, 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 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.

8. **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.
9. **RISK OF LOSS AND INSURANCE:** 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.
10. **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.
11. **TITLE:** Buyer shall obtain, at Buyer'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.
12. **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.

13. **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 8** 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.

14. **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 8 and 13**, Seller agrees to pay all costs of releasing existing loans and recording the releases; and the following costs: taxes accruing as of the Closing Date; the premium for the base Owner’s Title Insurance Policy; one-half of any and all closing fees; 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 8 and 13**, 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; costs of any endorsements or upgrades to the base Owner's Title Insurance Policy; the fees of Escrow Agent; one-half of any and all closing fees; and other expenses to be paid by Buyer under other provisions of this Agreement.

15. **DEFAULT:** If Buyer breaches this Agreement and is in default, Seller may treat this Agreement as being terminated and receive as its sole remedy the Earnest Money as liquidated damages and Seller shall have no further right or remedy at law or in equity against Buyer. 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 (i) notwithstanding any other provision of this Agreement to the contrary, the Earnest Money shall be promptly returned to Buyer 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.
16. **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.
17. **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.

18. DUTIES OF BUYER AND SELLER AT CLOSING:

- A. At the Closing, Seller shall deliver to Buyer, the following:
 - (1) A duly executed and acknowledged Limited 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.

19. 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.

20. DOCUMENTS FROM SELLER: Seller shall provide Buyer, within five (5) business days following the Effective Date, copies of the following documents or information relating to the Property, if in Seller's possession or reasonably available from third parties (the "**Seller Documents**"): (i) Title Report from Fidelity National Title Insurance Company covering the period from January 8, 2010 – November 26, 2021; and (ii) copies of current Allen County real estate tax invoices.

21. 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, to the best knowledge of Seller's signatory to this Agreement, 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 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 and any liens attributable to Buyer. 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 (other than any of the foregoing attributable to Buyer), and there will be no mortgages or security interests against the Property.
- E. 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.
- F. 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.
- G. 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 in violation of any applicable law, except as has/have been remediated in accordance with applicable laws.
- H. 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 alter any portion of the Property in any material respect or construct any material improvements to the Property.
- I. 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.

J. The Property depicted on attached **Exhibit A** represents all of the real property owned by Seller and/or its affiliates within a radius of one-mile of the Property.

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 21** will survive for twelve (12) months after the Closing Date, and will thereafter terminate, together with any claims under or remedies associated with **Section 13**, above. The representations and warranties contained in these **Subsections 21(A) and (C)** will survive indefinitely.

Any action alleging a breach of such representations and warranties must be commenced, if at all, within fifteen (15) months after the Closing Date (the “**Litigation Deadline**”); and expire twelve (12) months following the Closing Date (the “**Claims Period**”) as to matters for which Buyer has not provided written notice to Seller within such period of time. Any claim that Buyer may have at any time against Seller for a breach of any such representation or warranty, whether known or unknown, which is not specifically asserted by written notice before the expiration of the Claims Period and with respect to claims specified in writing and delivered before the expiration of the Claims Period that are not resolved or made the subject of litigation instituted and served prior to the Litigation Deadline, will not be valid or effective, and Seller will have no liability with respect thereto. Additionally, any claim actually known by Buyer on or prior to Closing shall be deemed waived by Buyer if Buyer does not terminate this Agreement on account thereof, but proceeds to Closing despite such breach. Notwithstanding anything to the contrary contained herein, with respect to any demand notice given after Closing but before the end of the Claims Period or any lawsuit filed after Closing but before the Litigation Deadline (1) in no event will Seller have any liability to Buyer for a breach of any covenant, representation or warranty under this Agreement or any Closing documents executed pursuant hereto in excess of Five Hundred Thousand Dollars (\$500,000.00) in the aggregate (“**Claims Ceiling**”), and (2) no claim by Buyer alleging a breach by Seller of any covenant, representation or warranty contained herein or in any of the Closing documents may be made, and Seller shall not be liable for any judgment in any action based upon any such claim, unless and until such claim, either alone or together with any other claims by Buyer alleging a breach by Seller of any such representation or warranty, is for an aggregate amount in excess of Fifty Thousand and No/100 Dollars (\$50,000.00) (the “**Claims Floor**”), in which event Seller’s liability respecting any final judgment concerning such claim or claims shall be for the entire amount thereof, subject to the limitation set forth in clause (1) above; provided, however, that if any such final judgment is for an amount that is less than or equal to the Claims Floor, then Seller shall have no liability with respect thereto. The provisions of this Section shall survive Closing.

22. 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 22(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: P-Americas, LLC
c/o PepsiCo Global Real Estate
700 Anderson Hill Road
Purchase, NY 10577
Attn.: Martyn Wallace, Director of Real Estate
Email: martyn.wallace1@pepsico.com

With a copy to:

Levine & Levine, PLLC
2 Jefferson Plaza, Suite 100
Poughkeepsie, NY 12601
Attn.: Dale J. Lois, Esq.
Email: dale@levinelevinelaw.com

Buyer: Fort Wayne Redevelopment Commission
Attn: Executive Director
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
Jonathan.Leist@cityoffortwayne.org

With a copy to:

Tom Trent
Rothberg Logan Warsco LLP
505 East Washington Boulevard
P.O. Box 11647
Fort Wayne, Indiana 46859
ttrent@rothberg.com

- 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. 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.
 - H. 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.
 - I. 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.
 - J. 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.
23. **PROFESSIONAL FEES:** Seller and Buyer represent to each other that no brokers are involved in this transaction and that Seller and Buyer shall indemnify each other from claims of any other third parties claiming a fee or other compensation for brokerage or other similar services to have been rendered for Seller or Buyer.
24. **COOPERATION FOR EXCHANGE:** If Seller desires to complete a like-kind exchange under Section 1031 of the Internal Revenue Code in connection with the transaction contemplated herein, Buyer agrees to reasonably cooperate in accomplishing the same.
25. **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.

26. **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.
27. **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.
28. **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.
29. **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.

[Signature page follows]

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

SELLER:

P-AMERICAS, LLC

By: _____

BUYER:

**THE CITY OF FORT WAYNE, INDIANA,
DEPARTMENT OF REDEVELOPMENT**

By: _____

EXHIBIT A



MAP REFERENCE #	PIN
1	02-12-02-136-008.000-074
2	02-12-02-181-005.000-074
3	02-12-02-181-006.000-074
4	02-12-02-181-010.000-074
5	02-12-02-181-013.000-074
6	02-12-02-181-016.000-074
7	02-12-02-181-021.000-074
8	02-12-02-204-003.000-074
9	02-12-02-184-001.000-074
10	02-12-02-184-002.000-074

DIGEST SHEET

TITLE OF RESOLUTION. A Resolution of the Common Council of the City of Fort Wayne, Indiana, approving the use of local income tax revenues for acquisition by the Fort Wayne Redevelopment Commission of real estate associated with the Pepsi Bottling Facility on North Harrison Street.

DEPARTMENT REQUESTING RESOLUTION. Redevelopment Commission.

SYNOPSIS OF RESOLUTION. This resolution approves funding in the amount of \$4,500,000 for acquisition by the Redevelopment Commission of the 6.4-acre Pepsi Bottling Facility located at 1207 North Harrison Street. Money for the acquisition will come from the Phase II Riverfront bond proceeds, which will be funded entirely by LIT Riverfront.

EFFECT OF PASSAGE. Passage of the resolution will give the Redevelopment Commission the ability to acquire a key piece of real estate located in the Riverfront area. Acquisition will provide substantial community benefits in that: (i) the Real Estate is within the planning area of the Riverfront Development Implementation Framework and is among the most strategically-located and valuable sites in the community, (ii) redevelopment of the site will bring more people, businesses, and vibrancy to north side of the river, (iii) new pedestrian-oriented development will improve connectivity between the riverfront, the Wells Street Corridor and the Bloomingdale Neighborhood, and (iv) redevelopment of the site will protect substantial public investments in Promenade Park and other nearby projects.

EFFECT OF NON-PASSAGE. Non-passage would mean foregoing the opportunity to acquire and control redevelopment of one of the largest and most pivotal sites in the entire Riverfront area. The site will likely continue to be used for industrial purposes, which marginalizes the substantial public and private investments that have already been made and impairs the catalytic nature of Riverfront public space. Furthermore, operation of the existing distribution facility adjacent to a busy park will continue to present a safety hazard that will be exacerbated as the area continues to develop.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). \$4,500,000.

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

May 5, 2022

MEMO

To: City of Fort Wayne Common Council

Copy: City of Fort Wayne Redevelopment Commission

From: Jonathan Leist, Executive Director, 427-1323

Re: **Resolution approving funding for the acquisition of the Pepsi Bottling Facility**

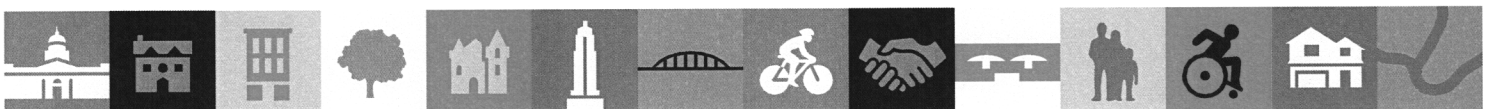
The Fort Wayne Redevelopment Commission hereby requests that the Common Council consider and approve the enclosed resolution authorizing funding in the amount of \$4.5 million for the acquisition of the Pepsi Bottling Facility located at 1207 North Harrison Street. As described in the resolution, digest sheet, and supporting materials, the real estate is one of the most pivotal sites in the community with regard to Riverfront development. Funds for the acquisition would come from bond proceeds from the Riverfront Phase II Bond, which is expected to be issued later this year. Bond payments will be made with Riverfront LIT.

Pursuant to a real estate purchase agreement being considered by the Redevelopment Commission on May 9th, the real estate would be conveyed to the Commission following Pepsi's relocation from its current facility to a new \$19 million facility to be constructed near Fort Wayne International Airport. A separate City Council resolution expected to be submitted contemporaneously with this resolution requests approval for real property tax abatement for the new facility.

Closing on the Harrison Street real estate is contingent upon Council's approval of the tax abatement for the new facility, Council's approval of the funding requested herein, and the Redevelopment Commission's approval of the purchase agreement for the Harrison Street facility. If approved, closing on the Harrison Street real estate and payment of the \$4,500,000 purchase price would occur in 2023.

If you have any questions about the proposed acquisition, please contact me at 427-1323 or jonathan.leist@cityoffortwayne.org.

Vibrant. Prosperous. Growing.



BILL NO. R-22-05-16

REPORT OF COMMITTEE ON FINANCE

May 24, 2022

Sharon Tucker Chair


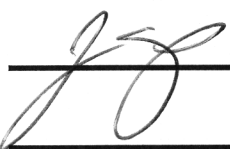
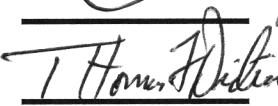

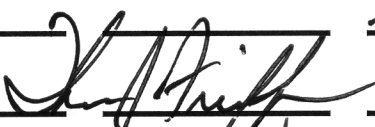
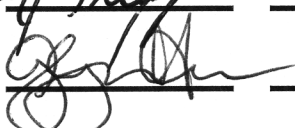
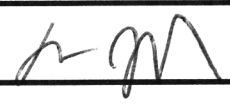


Russ Jehl Co-Chair

All Council Members

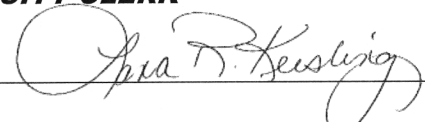
A Resolution of the Common Council of the City of Fort Wayne, Indiana, approving the use of Local Income Tax Lease Revenue Bond proceeds for acquisition by the Fort Wayne Redevelopment Commission of real estate associated with the Pepsi Warehouse Facility on North Harrison Street

Involving a total cost of \$4,500,000.00

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 Tucker.

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

Read the third time in full and on motion by Councilperson Tucker, 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 type="checkbox"/>	<input checked="" 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: May 24, 2022



 LANA R. KEESLING, CITY CLERK

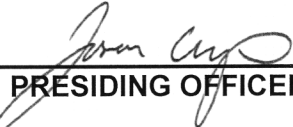
Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Resolution No. R-22-05-16 on the 24th day of May, 2022

ATTEST:



 LANA R. KEESLING
 CITY CLERK



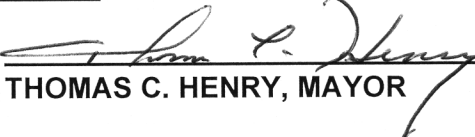
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th of May 2022, at the hour of 11:45 o'clock A.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 31ST day of MAY 2022, at the hour of 12:30 o'clock PM E.S.T.



 THOMAS C. HENRY, MAYOR

