

1 **BILL NO. R-22-08-20**

2 **RESOLUTION NO. R-72-22**

3 **A RESOLUTION APPROVING THE PURCHASE**  
4 **OF CERTAIN REAL ESTATE LOCATED AT 2107**  
5 **BUTLER ROAD, WASHINGTON TOWNSHIP,**  
6 **FORT WAYNE, INDIANA, FOR THE CITY OF**  
7 **FORT WAYNE - \$299,000.00.**

8 **WHEREAS**, the City of Fort Wayne, Indiana, Board of Public Works  
9 desires to purchase property located at 2107 Butler Road, Washington Township,  
10 Fort Wayne, Indiana; and

11 **WHEREAS**, the purchase of this property is for the purpose of a  
12 future Public Works project;

13 **WHEREAS**, the purchase price for the property is TWO HUNDRED  
14 NINETY-NINE THOUSAND AND 00/100 DOLLARS – (\$299,000.00); 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.  
18

19  
20 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON**  
21 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**  
22

23  
24 **SECTION 1.** The purchase of real estate, located at 2107 Butler  
25 Road in Washington Township, Fort Wayne, Indiana specifically described in the  
26 Purchase Agreement, is hereby approved and agreed to. The appropriate officials  
27 of the City are hereby authorized to execute all documents necessary to  
28 accomplish said purchase.  
29



A RESOLUTION approving the assignment of buyer's rights,  
and the Purchase Agreement as amended for the acquisition of real estate located at  
2107 Butler Road, Fort Wayne, Indiana 46808

Resolution # 109-8-23-22-1

WHEREAS, The City of Fort Wayne Board of Public Works wishes to purchase a parcel of real estate located in Fort Wayne, Indiana and more particularly described as:

Part of the West 1/2 of the Southwest Quarter of Section 27, Township 31 North, Range 12 East, Allen County, Indiana, and more particularly described as follows, to-wit: Beginning at the intersection of the East line of the West Half of said Southwest Quarter and the center line of the Lincoln Highway; thence Northwesterly on the center line of said Highway, 253.8 feet to the center line of Butler Road; thence Southwesterly on the center line of said Butler Road, 261 feet; thence Southwesterly at an angle of 90 degrees with the said Butler Road, 398 feet to the East line of said West Half of said Southwest Quarter; thence North 256.5 feet to the place of beginning, said in previous deed to contain 1.69 acres, more or less, excepting therefrom that part thereof condemned and appropriated for highway purposes.

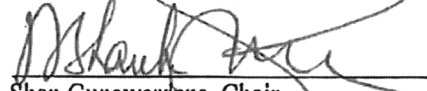
WHEREAS, The City of Fort Wayne Board of Public Works accepts the assignment of the buyer's rights and obligations in the Purchase Agreement dated June 17, 2022 between Douglas Elkins and Summit Development Corp, an Indiana non-profit corporation, attached to this resolution as Exhibit A ("Purchase Agreement"), pursuant to the form of assignment attached to this resolution as Exhibit B ("Assignment"), and authorizes the execution of the Assignment by the City of Fort Wayne Board of Public Works and the execution by the Chair of the City of Fort Wayne Board of Public Works of all additional documents necessary to consummate the transaction described in the Purchase Agreement and as assigned to the City of Fort Wayne Board of Public Works by the Assignment.

WHEREAS, Douglas Elkins wishes to voluntarily sell the Real Estate to the City for an agreed upon purchase price of Two Hundred Ninety-Nine Thousand Dollars (\$299,000.00), which price exceeds the average of the appraisals received by the City of Fort Wayne Board of Public Works.

NOW, THEREFORE, the Board of Public Works of the City of Fort Wayne, Indiana, hereby resolves to purchase the above-named property pursuant to the Purchase Agreement and the Assignment, following all applicable state statutes.

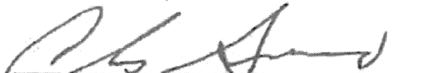
Signed this 23 day of August, 2022.

CITY OF FORT WAYNE  
BOARD OF PUBLIC WORKS

  
Shan Gunawardena, Chair

ABSENT

Kumar Menon, Member

  
Chris Guerrero, Member

Attest:   
Michelle Fulk-Vondran, Clerk

## **REAL ESTATE PURCHASE AND SALE CONTRACT**

THIS REAL ESTATE PURCHASE AND SALE CONTRACT (“Agreement”) is made and entered into this 17<sup>th</sup> day of June 2022 (“Effective Date”), by and between Douglas Elkins (referred to herein as “Seller”), and Summit Development Corp., an Indiana nonprofit corporation, (referred to herein as “Buyer”).

### **PRELIMINARY STATEMENT**

Seller is the owner of certain real property and improvements thereon situated in the City of Fort Wayne, County of Allen, State of Indiana, and is willing to sell such real property to Buyer, and Buyer is willing to purchase such real property from Seller, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

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

(a) “Buyer” shall mean Summit Development Corp., an Indiana nonprofit corporation, its nominees, successors, and assigns, including without limitation, any entity that may be formed by it for purposes of acquiring the Premises. Buyer retains the right to assign the rights and obligations of this Agreement with notice to Seller but without Seller’s prior written consent.

(b) “Closing” shall mean the consummation of the purchase and sale of the Premises in accordance with the terms of this Agreement upon completion of all conditions precedent herein required.

(c) “Earnest Money Deposit” shall mean the TEN THOUSAND AND NO/100 DOLLAR (\$10,000.00) deposit on the Purchase Price deposited by Buyer with the Title Company, contemporaneously with the execution of this Agreement.

(d) “Premises” shall mean that certain parcel of real property located in the City of Fort Wayne, Allen County, Indiana, as presently identified by legal description on Exhibit “A” attached hereto and made a part hereof. The full legal description of the Premises shall be noted on the Survey described below. The Premises include all buildings, improvements, fixtures, tenements, hereditaments and appurtenances belonging or in any wise appertaining to such real property, and all of Seller’s right, title and interest, if any, in and to (i) any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining such real property to the center line thereof to the extent included in the legal description of the Premises, but subject to public rights-of-way and easements; (ii) any strips and gores of land adjacent to, abutting or used in connection with

such real property; (iii) any easements and rights, if any, inuring to the benefit of such real property or to Seller in connection therewith; and (iv) any and all rights in and to any leases, licenses or other assets of any type or nature pertaining to the use of such real property. Notwithstanding the legal descriptions as attached hereto, it is agreed that the Premises shall be deemed to include all right, title and interest of Seller in and to the land and improvements, including such interests to be hereafter acquired as a condition hereof, commonly known as 2107 Butler Road, Fort Wayne Indiana 46808, and such legal description shall be reformed according to the survey described in Section 4 of this Agreement to include all such interests.

(e) "Purchase Price" shall mean the Purchase Price for the Premises in the aggregate sum of TWO HUNDRED NINETY-NINE THOUSAND AND NO/100 DOLLARS (\$299,000.00).

(f) "Seller" shall mean the party designated as Seller in this Agreement.

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

2. Purchase and Sale of Property. Subject to the terms, provisions and conditions set forth herein, Seller hereby agrees to sell the Premises to Buyer, and Buyer hereby agrees to purchase the Premises from Seller.

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

(a) Earnest Money Deposit. Contemporaneously with the execution of this Agreement, Buyer has deposited with the Title Company the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) as the Earnest Money Deposit, which deposit Title Company shall deposit and apply as herein provided; and

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

4. Survey of Premises. Promptly after execution hereof, Buyer shall order and procure, at the initial expense of Buyer, a boundary survey of the Premises with all easements (including utility easements), available utility services, encroachments, rights-of-way and other matters (whether or not of record) pertaining to or affecting the Premises plotted thereon, and showing the location, area and dimensions of all improvements, easements, streets, roads, railroad spurs, flood hazard areas and alleys on or abutting said Premises, and providing a

legal description of the Premises (“Survey”). Such Survey shall be dated or re-dated at a date not more than thirty (30) days prior to the Closing and shall be prepared in compliance with the latest minimum standard detail requirements for land title surveys as developed by the American Land Title Association and the National Society of Professional Surveyors. Buyer shall be entitled to a credit against the Purchase Price at Closing in the amount of the cost of the Survey.

5. Title to Premises.

(a) State of Title to be Conveyed. At the Closing, Seller shall convey to Buyer, its nominees, successors or assigns, by general warranty deed, good and merchantable and insurable fee simple title to the Premises, free from all liens, encumbrances, restrictions, rights-of-way and other matters, excepting only the “Permitted Exceptions” described as follows: (i) the lien of general real estate taxes not yet due and payable, subject to proration of taxes as hereinafter provided; (ii) liens or encumbrances of a definite or ascertainable amount and which will be paid and discharged in full by or for Seller at or prior to the Closing; and (iii) other easements or encumbrances of record, if any, which have not been objected to by Buyer pursuant to Section 5(c) below.

(b) Title Commitment and Title Policy. Promptly after the execution hereof, Buyer shall order and procure the Title Commitment, at the expense and for the account of Buyer. At the Closing, the Title Policy or an endorsement to the Title Commitment shall be issued to Buyer insuring Buyer’s fee simple interest in the Premises in the state required by Section 5(a) above, with all general exceptions deleted, and subject only to the Permitted Exceptions described below. The Title Policy shall contain such endorsements as Buyer may, in Buyer’s sole discretion, deem necessary. Buyer shall receive a credit for the cost of the Title Commitment and all additional premiums, charges and costs of the Title Policy at the Closing.

(c) Objections to State of Title. Buyer shall give written notice to Seller within ten (10) business days after the date it receives the Title Commitment and Survey, specifying its objection(s) to the state of title to the Premises. Seller shall thereupon have a period of ten (10) days in which it shall use its best efforts to remedy the objection(s) or to induce the Title Company to issue an endorsement to the Title Commitment satisfactory to Buyer insuring over or removing such objection(s). If Buyer’s objection(s) to the state of title to the Premises are not remedied by Seller within such ten (10) day period, or such further period as Buyer may, in its sole discretion, grant, then Buyer shall have the right, within ten (10) days thereafter, to give written notice to Seller that Buyer waives such title defects or objections and elects to proceed to acquire the Premises without any abatement of the Purchase Price and to take title to the Premises subject to such defects or objections; otherwise, this Agreement shall be automatically cancelled and rescinded, the Earnest Money Deposit shall be refunded to Buyer by the Title Company, and the rights and obligations of the parties hereto shall thereupon cease.

6. Seller's Covenants, Warranties and Representations. Seller hereby covenants, warrants, and represents to the best knowledge of Seller as follows:

(a) That Seller has not received any notice of, nor does it have any actual knowledge of, any violation of any law, zoning ordinance, code or regulation affecting the Premises; and that Seller has not received any notice, does not have any actual knowledge of or information as to any existing or threatened condemnation or other legal action of any kind affecting the Premises.

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

(c) That from the date hereof up to said Closing date, Seller shall refrain from creating or concurring in the creation on the Premises of any easements or other encumbrances which would prevent Seller from conveying title to Buyer subject only to such exceptions as herein permitted.

(d) That except for the items which are to be assumed by Buyer hereunder, if any, or to be prorated as herein set forth, Seller shall be solely liable for the payment of all costs and expenses, liabilities, obligations, and claims arising solely out of Seller's ownership and operation of the Premises prior to the Closing.

(e) That Seller will take and perform those acts which are necessary hereunder to fulfill the terms and conditions hereof.

(f) That there is not constructed, deposited, stored, disposed, placed, or located on the Premises any material, element, compound, solution, mixture, substance, or other matter of any kind, including solid, liquid, or gaseous material, that constitutes a Hazardous Material as hereafter defined. For purposes of this Agreement, Hazardous Material shall mean any material or substance:

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

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

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

iv. containing Polychlorinated Biphenyls (PCB);

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

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

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

7. Conditions to Closing. Buyer and Seller agree that the sale and purchase of the Premises is subject to the satisfaction of the following contingencies and conditions prior to the date that is sixty (60) days after the Effective Date, and if not so satisfied this Agreement shall, at the option of Buyer, be cancelled and rescinded and the Title Company shall refund Earnest Money Deposit, together with interest accrued thereon, to Buyer. Notwithstanding the foregoing, Buyer may, at its option, waive any of the conditions or contingencies set forth in this Section 7 and proceed to purchase the Premises from Seller.

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

(b) That Buyer shall have completed Buyer's due diligence investigation of the Premises and that Buyer is satisfied with its due diligence investigation of the Premises, in Buyer's sole discretion within sixty (60) days after the Effective Date ("Due Diligence Period"). In the event Buyer is not satisfied with its due diligence investigation Buyer may terminate this Agreement and receive a refund of the Earnest Money Deposit by providing written notice to Seller on or before the expiration of the Due Diligence Period. Buyer shall have the right and option to extend the Due Diligence Period by an additional thirty (30) days by providing written notice to Seller prior to the expiration of the Due Diligence Period and depositing an additional Earnest Money Deposit of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) which shall be held, refunded and applied as the Earnest Money Deposit is held, refunded and applied pursuant to this Agreement.

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

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

(e) That Buyer shall have approved the form and content of the Title Commitment and the Survey, including, but not limited to, legal description, lot size and configuration, and all conditions, exceptions, limitations, reservations, easements, liens, rights-of-way and encumbrances set forth therein, and the title to the Premises shall have remained in the state reflected by the Title Commitment, as approved by Buyer, through the date of the Closing.

(f) That Buyer shall have approved the form and content of the general warranty deed conveying the Premises to Buyer, the vendor's affidavit, the non-foreign certificate, the closing statement covering the purchase and sale of the Premises, and all other documents and instruments required to effect the sale of the Premises and the agreements of the parties herein set forth and the reasonable requirements of the Title Company issuing the Title Policy and Seller agrees to prepare such documents and instruments promptly upon notification by Buyer that all conditions precedent above set forth have been performed or waived. It shall be a condition to the Closing pursuant to this Agreement that Buyer shall have obtained all necessary public and governmental approvals necessary, if any, to complete the purchase of the Premises pursuant to this Agreement.

8. Proration of Real Estate Taxes. Seller shall pay all real property taxes and any general and/or special assessments which are due and payable, if any, on or before the date of the Closing, or which otherwise constitute a lien upon the Premises as of the date of the Closing. Current taxes, if any, shall be equitably prorated through the date of the Closing based on the latest available tax bills covering the Premises. If, at the Closing, the Premises or any part thereof shall be subject to any assessment(s) which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this Agreement all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed to the Premises, shall be deemed to be due and payable at the Closing and to be liens upon the Premises and shall be paid and discharged by the Seller at or prior to the Closing.

9. Closing.

(a) Provided all conditions set forth in Section 7 hereof or elsewhere herein have been satisfied or waived, within the time therein required, the Closing shall take place at such time and date within thirty (30) days after the expiration of the Due Diligence Period or thereafter, as agreed between Buyer and Seller.

The Closing shall occur at the offices of Title Company, or at such other place as agreed by Buyer and Seller. Buyer and Seller agree to deposit with Title Company not later than the date of the Closing all executed documents required in connection with this transaction, including such documents as requested by the Title Company issuing the Title Policy. Upon receipt of all necessary documents, and when the Title Company can issue to Buyer the Title Policy, Title Company shall on the date of the Closing, upon instructions from Buyer and Seller, cause the general warranty deed to the Premises and any other necessary or appropriate instruments to be filed for record. The Earnest Money Deposit shall be applied toward the Purchase Price at Closing.

(b) Seller hereby agrees that Buyer shall be entitled to a credit against the Purchase Price at Closing for the costs incurred for: (i) the preparation of the Survey; (ii) the issuance of the Title Commitment; and (iii) the premium charged for the issuance of the Title Policy issued pursuant to Title Commitment. Seller shall also be responsible for all payments required of Seller pursuant to this Agreement and Seller's attorneys, brokerage, other professional fees, if any. Each party shall be responsible for its other costs and expenses in accordance with the obligations or conditions to be performed by each respective party hereto. At the time of Closing, Seller and Buyer shall execute and deliver a closing statement setting forth said Purchase Price, with such closing adjustments as provided in this Agreement.

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

11. Indemnity. Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses, costs and expenses (including, without limitation, attorneys fees) arising or resulting from, or suffered, sustained or incurred by Buyer as a result (direct or indirect) of, the untruth, inaccuracy or breach of any of the covenants, warranties and representations made by the Seller to Buyer herein or in any other documents or instruments executed by Seller to effect the sale herein intended, which indemnity shall survive the Closing hereunder.

12. Notices. All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed sufficiently given when personally delivered or when deposited in the United States mail, postage prepaid, certified or registered, or when delivered to a nationally recognized overnight courier service with guaranteed next business day delivery and addressed as follows (or to such other person, or to such other address, of which any party hereto shall have given written notice as provided herein):

IF TO SELLER: Douglas Elkins  
2107 Butler Road  
Fort Wayne, IN 46808

IF TO BUYER: Summit Development Corporation  
Attn: Karl Bandemer, President  
200 East Berry Street, Suite 320  
Fort Wayne Indiana 46802  
Phone: (260) 427-2666  
Email: [Karl.Bandemer@cityoffortwayne.org](mailto:Karl.Bandemer@cityoffortwayne.org)

WITH A COPY TO: Jon A. Bomberger  
Faegre Drinker Biddle & Reath LLP  
110 East Berry Street, Suite 2400  
Fort Wayne, IN 46802  
Phone: (260) 424-8000  
Email: [jon.bomberger@faegredrinker.com](mailto:jon.bomberger@faegredrinker.com)

13. Brokerage Commission. Seller and Buyer each warrant and represent that there are no finders or brokers entitled to fees or commissions which may be due from the introduction of the Seller and Buyer and/or the purchase and sale of the Premises, except for fees due Sturges Property Group, which shall be the sole responsibility of Seller and paid by Seller at Closing.

14. Eminent Domain. In the event that, prior to the date of the Closing, Seller acquires knowledge of any pending or threatened claim, suit or proceeding to condemn or take all or any part of the Premises under the power of eminent domain, then Seller shall immediately give notice thereof to Buyer, and Buyer shall have the right to terminate its obligations under this Agreement by delivering notice thereof to Seller within thirty (30) days after receiving notice from Seller of such condemnation or taking, and thereupon the Earnest Money Deposit shall be refunded to Buyer and the rights and obligations of the parties hereto shall cease. If Buyer shall not elect to terminate this Agreement pursuant to this Section 14, the parties shall proceed with the Closing in accordance with the terms hereof without abatement of the Purchase Price, but all proceeds of any condemnation award shall be payable solely to Buyer, and Seller shall have no interest therein.

15. Miscellaneous.

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

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

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

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

(e) Cooperation. Buyer and Seller shall cooperate fully with each other to carry out and effectuate the purchase and sale of the Premises in accordance herewith and the satisfaction and compliance with all the conditions and requirements set forth herein. Wherever the approvals of Buyer or Seller as herein set forth are so required, such approvals shall not unreasonably be withheld except as otherwise provided.

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

(g) Effective Date. This Agreement shall only become effective, and the Effective Date referenced above shall only occur upon the date that Buyer shall have received from Seller a counterpart of this Agreement executed by Seller indicating Seller's unequivocal acceptance of the terms and conditions of this Agreement.

(h) Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement. Facsimiles and PDFs of a party's authorized representative's signature shall be deemed to be binding upon such party. The parties agree and acknowledge that this document may be signed by means of an electronic signature, provided that such signature and any related signing process comply fully with all applicable laws (including, without limitation, the U.S. federal E-SIGN Act and any applicable state laws).

(i) Post-Closing Possession. Seller shall have the option to retain possession of the Premises for a period of sixty (60) days after Closing by providing written notice of his intent to do so prior to Closing. In the event Seller exercises his option to retain possession of the Premises as provided herein, Seller agrees throughout Seller's possession after Closing: (i) to repair and maintain the Premises in the same state as exists as of the date of Closing, reasonable wear and tear excepted, from and after the date of Closing; (ii) to pay all the costs of all utilities serving the Premises; (iii) to maintain property and liability insurance

upon the Premises with insurers and in such amounts as is reasonable under the circumstances naming the Buyer as an additional insured; (iv) to pay all taxes and assessments against the Premises; and (v) to pay all other costs and expenses accruing or coming due during the term of Seller's possession after the date of Closing. Seller agrees to deliver possession of the Premises to Buyer no later than sixty (60) days after the date of Closing.

*[Remainder intentionally blank. Signature page follows.]*

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

Executed by Buyer this 14 day of June 2022.

SUMMIT DEVELOPMENT CORP.,  
an Indiana nonprofit corporation

By: 

Printed: JONATHAN LEIST

Its: SECRETARY / AUTHORIZED MEMBER

“Buyer”

Accepted and executed by Seller this \_\_\_\_\_ day of June 2022.

\_\_\_\_\_  
Douglas Elkins

“Seller”

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

Executed by Buyer this \_\_\_\_\_ day of June 2022.

SUMMIT DEVELOPMENT CORP.,  
an Indiana nonprofit corporation

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

“Buyer”

Accepted and executed by Seller this 17 day of June 2022.

  
\_\_\_\_\_  
Douglas Elkins

“Seller”

**EXHIBIT A**

**DESCRIPTION OF THE PREMISES**

An approximately 1.69-acre tract located at the intersection of Goshen Road and Butler Road  
in Fort Wayne, Indiana: tax parcel number 02-07-27-353-006.000-073  
Commonly known as 2107 Butler Road

[Full legal description to be determined by Survey]

**ASSIGNMENT OF PURCHASE AGREEMENT**

THIS ASSIGNMENT OF PURCHASE AGREEMENT (“Assignment”) is made as of the \_\_\_\_\_ day of August, 2022, by and between Summit Development Corp., an Indiana nonprofit corporation (“Assignor”) and the City of Fort Wayne, Indiana, Board of Public Works (“Assignee”).

**RECITALS**

WHEREAS, Assignor agreed to purchase certain real estate and improvements located in Allen County, Indiana, from Douglas Elkins (“Seller”), pursuant to a Real Estate Purchase and Sale Agreement by and between Assignor and Seller dated June 17, 2022 (“Purchase Agreement”);

WHEREAS, Assignor reserved the right to assign its rights and obligations pursuant to the Purchase Agreement without the Seller’s consent; and

WHEREAS, Assignor now desires to assign its rights and obligations under the Purchase Agreement to Assignee, and Assignee desires to assume such rights and obligations.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

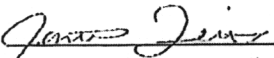
1. Assignor hereby assigns to Assignee, and Assignee hereby accepts the assignment of, Assignor’s rights and obligations under the Purchase Agreement pursuant to the rights granted Assignor in Section 1(a) of the Purchase Agreement.
2. Assignee hereby assumes all obligations of Assignor under the Purchase Agreement and agrees to indemnify and hold Assignor harmless from and against all claims made against Assignor by virtue of the Purchase Agreement.

***[Remainder of this page intentionally left blank; signature page follows.]***

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Purchase Agreement effective as of the date first written above.

**ASSIGNOR:**

SUMMIT DEVELOPMENT CORP.,  
an Indiana nonprofit corporation

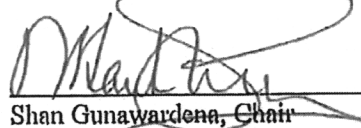
By: 

Printed: JONATHAN LEIST

Its: SECRETARY / AUTHORIZED MEMBER

**ASSIGNEE:**

THE CITY OF FORT WAYNE, INDIANA,  
BOARD OF PUBLIC WORKS

  
Shan Gunawardena, Chair

ABSENT

Kumar Menon, Member

  
Chris Guerrero, Member

Attest:   
Michelle Fulk-Vondran, Clerk

8-23-2022

*[Signature Page to Assignment of Purchase Agreement – Butler Road]*

**APPRAISAL REPORT  
2107 BUTLER ROAD  
FORT WAYNE, INDIANA 46808**

**OWNER: DOUGLAS ELKINS**

**PREPARED FOR:  
THE 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**

**APPRAISAL DATE:  
JULY 26, 2022**

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

**923 Northcrest Business Center, Suite 10D, Fort Wayne, IN 46805 • 260-423-9479**

# Verne V. Mitchell & Associates, Inc.

Real Property Appraisal Services

Verne V. Mitchell, III, MAI

July 26, 2022

Mr. Chris Carmichael  
Property Manager  
City of Fort Wayne  
200 East Berry Street, Suite 470  
Fort Wayne, IN 46802

RE: Appraisal of: 2107 Butler Road  
Fort Wayne, IN 46808

Owner: Douglas Elkins

Dear Mr. Carmichael:

Responding to your request, we have appraised the above referenced property which is located at the intersection of Butler Road and Goshen Avenue in the northwest section of Fort Wayne, Allen County, Indiana. The purpose of this appraisal is to form an opinion of the property's market value. The interest appraised is its fee simple estate. Uniform Standards of Professional Appraisal Practice (USPAP) has been applied in preparing this report. Assumptions and Limiting Conditions and Extraordinary Assumptions govern this appraisal. This letter of transmittal is considered part of the appraisal report.

An Extraordinary Assumption applied for this appraisal is the projection that the property can be rezoned for a commercial use. A rezoning of the property to at least a C1 status is anticipated in the valuation analysis. This is a reasonable assumption based upon land use patterns within the immediate area and the heavy traffic utilizing Goshen Avenue and Goshen Road.

The existing use of subject property in a single-family residential capacity is no longer the highest and best use of the property. The value of the property as improved as a residential property is less than the contributory land value when evaluated on a commercial basis. This is set forth within the appraisal analysis.

The property was viewed on July 21, 2022. The analysis in this report was completed on July 26, 2022.


Our opinion of the property's market value is:

**THREE HUNDRED THOUSAND DOLLARS**  
**(\$300,000)**

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  
VVM/ms



Alexander C. Mitchell  
Indiana Appraiser Trainee  
License Number TR41400023

**Appraisal Valuation**  
Of  
Property Located At  
**2107 Butler Road**  
**Fort Wayne, Allen County, Indiana**

For  
**Chris Carmichael, Property Manager**  
**City of Fort Wayne**  
Citizens Square  
200 East Berry Street, Suite 470  
Fort Wayne, Indiana 46802

As Of  
**July 1, 2022**  
(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  
Phone: 260.422.0894

July 26, 2022

**Chris Carmichael, Property Manager**  
**City of Fort Wayne**  
Citizens Square  
200 East Berry Street, Suite 470  
Fort Wayne, Indiana 46802

Dear Mr. Carmichael:

RE: Appraisal Valuation of Property Located at 2107 Butler Road in Fort Wayne, Allen County, Indiana

As you requested and agreed upon via email, I have personally inspected the above-referenced property for appraisal purposes. The property is being appraised to arrive at an opinion of its fee simple estate market value as of July 1, 2022, the date of inspection.

This appraisal report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the 2020-2022 Uniform Standards of Professional Appraisal Practice. This report is being completed based on the Scope of Work detailed on page 22 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 property had the following fee simple estate market value as of July 1, 2022, the date of inspection:

**TWO HUNDRED NINETY-NINE THOUSAND DOLLARS (\$299,000)**

Extraordinary Assumption(s)

This term is defined on page 4 in the Uniform Standards of Professional Appraisal Practice 2020-2022 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.”*

1. The valuation herein assumes that there are no environmental issues with the subject property. No environmental issues were noticed at the time of inspection; however, no responsibility is assumed by this appraiser if any are subsequently found.

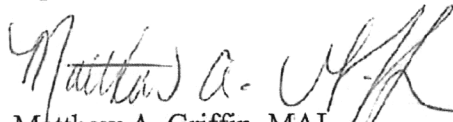
Hypothetical Condition(s)

This term is defined on page 4 in the Uniform Standards of Professional Appraisal Practice (USPAP) 2020-2022 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 appraisal.

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,

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

kaf



# CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

August 18, 2022

City Council Members  
City of Fort Wayne

RE: City of Fort Wayne, Indiana, Board of Public Works/Douglas Elkins Purchase Agreement 2107 Butler Rd

Dear Council Members:

The City has entered into a Purchase Agreement to acquire property at 2107 Butler Rd in Washington 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,

A handwritten signature in black ink, appearing to read "Chris Carmichael".

Christopher Carmichael  
Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

200 E. Berry St. • Fort Wayne, Indiana • 46802 • [www.cityoffortwayne.org](http://www.cityoffortwayne.org)  
An Equal Opportunity Employer

# 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, Indiana, Board of Public Works and Douglas Elkins for a property located at 2107 Butler Rd in Washington Township, Allen County, Indiana |
| Awarded To                    | Douglas Elkins  |
| Amount                        | \$299,000.00  |
| 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<br>(State, Federal,<br>Piggyback--Authority) | Purchase Agreement between City of Fort Wayne, Indiana, Board of Public Works and Douglas Elkins for a property located at 2107 Butler Rd in Washington Township, Allen County, Indiana |
| Sole Source/<br>Compatibility Justification                | N/A   |

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

|  |                                |
|--|--------------------------------|
| Most Responsible,<br>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 &amp; describe project; attach supporting documents as necessary.</i> | City acquiring real estate for future Public Works project. ✓ |
|  |   |
|  |   |
|  |   |

## REQUEST FOR PRIOR APPROVAL

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

## FUNDING SOURCE

|                             |                |
|-----------------------------|----------------|
| <i>Account Information.</i> | LIT-ED (CEDIT) |
|                             |                |
|                             |                |
|                             |                |

**BILL NO. R-22-08-20**

**REPORT OF COMMITTEE ON FINANCE**

**September 13, 2022**

***Russ Jehl Chair***

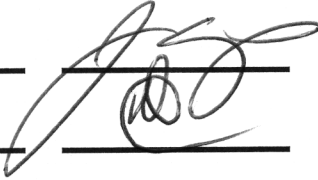


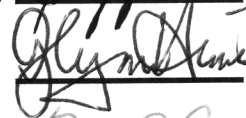

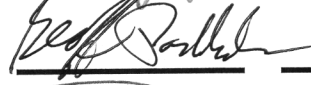

***Sharon Tucker Co-Chair***

***All Council Members***

A Resolution approving the purchase of certain real estate located at 2107 Butler Road, Washington Township, Fort Wayne, Indiana, for the City of Fort Wayne

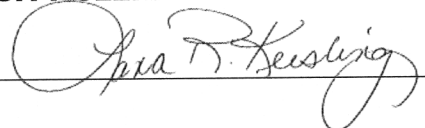
*The purchase price for the property is \$299,000.00*

**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                |  |                    |                |

*Not in Zoom*

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

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

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 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 13, 2022

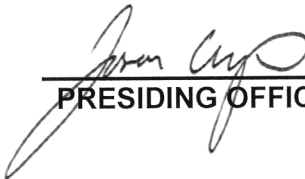
  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

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


Resolution No. R-22-08-20 on the 13th day of September, 2022

ATTEST:

  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

  
 \_\_\_\_\_  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th of September 2022, at the hour of 9:15 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 16<sup>th</sup> day of September 2022, at the hour of 10:00 o'clock Am E.S.T.

  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR

