

1 **BILL NO. R-24-04-14**

2 **RESOLUTION NO. R-14-24**

3 **A RESOLUTION APPROVING A PURCHASE**  
4 **AGREEMENT FOR THE ACQUISITION OF PART**  
5 **OF THAT CERTAIN REAL PROPERTY**  
6 **LOCATED AT 4800 MAPLECREST ROAD, IN**  
7 **FORT WAYNE, INDIANA, FOR THE CITY OF**  
8 **FORT WAYNE, INDIANA (Approved and**  
9 **Executed by the Board of Public Works on**  
10 **March 26, 2024).**

11 **WHEREAS**, the City of Fort Wayne, by and through its Division of  
12 City Utilities ("CU"), wishes to acquire a part of that certain real property located at  
13 4800 Maplecrest Road, in the City of Fort Wayne, Indiana, (the "Real Estate"), to  
14 be used for drainage improvements to expand the capacity of Bullerman Drain, to  
15 increase its capacity and alleviate neighborhood flooding; and

16 **WHEREAS**, the owner of the Real Estate is 219 Sackman LP (the  
17 "Seller").

18 **WHEREAS**, the City of Fort Wayne, by and through its Board of  
19 Public Works, approved and executed a purchase agreement to acquire the Real  
20 Estate in the regularly-held meeting of the Board of Public Works on March 26,  
21 2024; and

22 **WHEREAS**, the purchase price for the Real Estate is Sixty  
23 Thousand and 00/100 Dollars (\$60,000.00) (the "Purchase Price"); and

24 **WHEREAS**, Sec. 37.25 of the City of Fort Wayne Code of Ordinances  
25 requires the Common Council's approval of any conveyance of real estate to the  
26 City.

27 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON**  
28 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**  
29  
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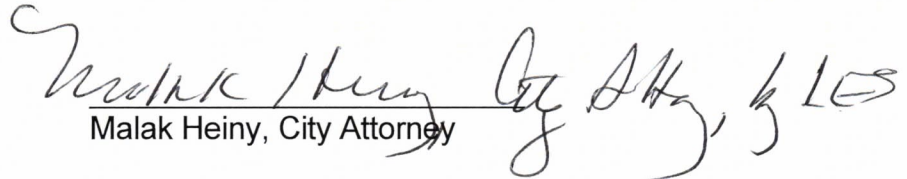
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**SECTION 1.** The acquisition of the Real Estate by CU, the City of Fort Wayne, by and through its Board of Public Works, in the amount of the Purchase Price, and upon such other terms and conditions as CU shall determine, is hereby agreed to and approved. The appropriate officials of the City of Fort Wayne are hereby authorized to execute all documents necessary to effectuate said purchase.

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

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Malak Heiny, City Attorney

# REAL PROPERTY PURCHASE AGREEMENT

## Fort Wayne City Utilities

The City of Fort Wayne ("Buyer") agrees to purchase the fee simple title to all of the following Real Property ("Property") for the consideration stated below subject to the conditions, requirements, and stipulations described in the following Purchase Agreement.

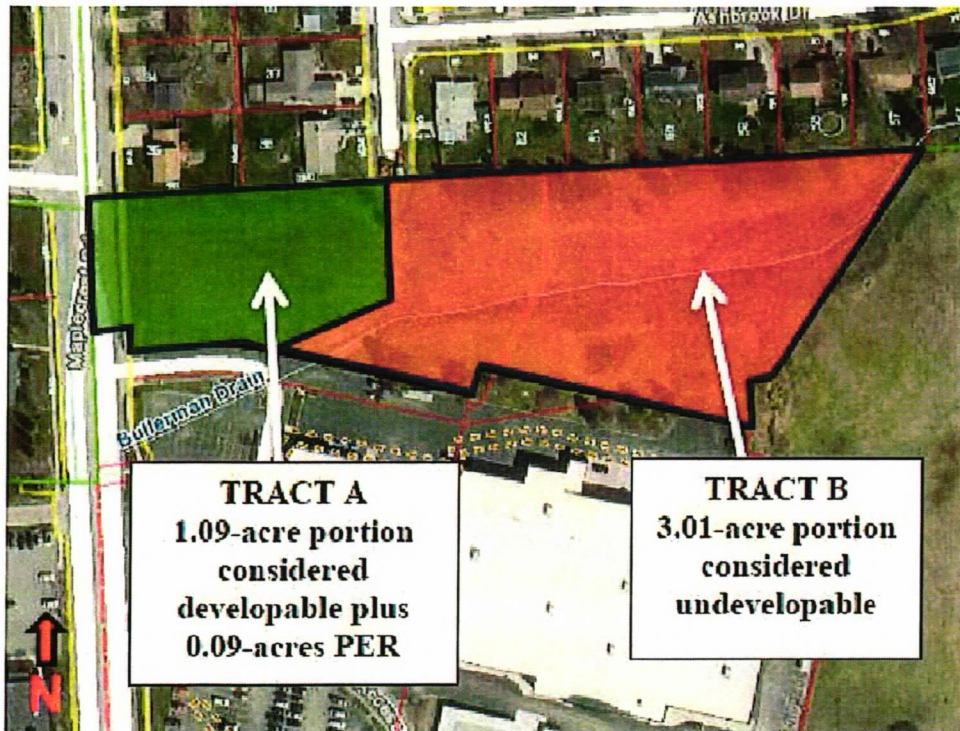
### CONTACT INFORMATION and LOCATION OF PROPERTY

Owners: 219 Sackman LP ("Seller")  
c/o Shawn Heffern, Midland Atlantic Properties (broker), (317) 597-1715

Property Address: 4700 Maplecrest Rd & 4800 Maplecrest Rd (partial), Fort Wayne, Indiana 46815

Latest Deed of Record: Document Number 2023000593

Land area to be purchased: Approximately 3.01 acres comprising a portion of PIN 02-08-22-351-001.002-072 and the entirety of 02-08-22-351-002.001-072, depicted as "Tract B" below (final survey and legal description to follow accepted offer) (the "Property").



**TRACT A**  
1.09-acre portion  
considered  
developable plus  
0.09-acres PER

**TRACT B**  
3.01-acre portion  
considered  
undevelopable

### PURCHASE PRICE

The City agrees to pay to the Seller the total purchase amount of \$60,000.00 (Sixty Thousand Dollars and Zero Cents) for the Property.

**NOTE:** The Seller certifies that no substantial changes have occurred to the Property to reduce the value determined by the appraisals, as of the effective date of this Purchase Agreement.

# REAL PROPERTY PURCHASE AGREEMENT

## Fort Wayne City Utilities

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### EXPIRATION OF OFFER

This Purchase Agreement shall be returned to the City no later than 12 noon, on Monday, March, 11, 2024, otherwise this Purchase Agreement shall be null and void and both parties shall be released from the transaction.

### APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL

This transaction is subject to approval by both the Board of Public Works and the Common Council of the City of Fort Wayne, Indiana. In the event that either body does not approve this transaction, the transaction shall be terminated and both parties shall be released from this Purchase Agreement.

### CLOSING

#### Closing Date:

The closing date for this transaction shall be on or before July 5, 2024, or this Agreement shall terminate unless an extension of time is mutually agreed to in writing. Any change in the closing date shall be agreed to in writing by both parties.

#### Location of Closing:

The closing shall be held at TBD located at TBD, in Fort Wayne, Indiana.

#### Closing Fees:

All fees charged by the closing agent, including document preparation and recording fees shall be paid by the Buyer.

### METHOD OF PAYMENT

The entire amount shall be paid in cash.

Both parties agree that all funds delivered to the closing agent's escrow account shall be such that the closing agent shall be able to distribute all funds in accordance with I.C. 27-07-3.7-1 through 27-07-3.7-1-10, inclusive. Furthermore, all funds sent from one source, when the amount is \$10,000.00 or greater, shall be sent in the form of an irrevocable wire transfer to the escrow account of the closing agent, and all funds under \$10,000.00 from one source shall be guaranteed to be "Good Funds" as defined by the aforesaid Indiana Code.

### POSSESSION

Possession of the Property shall be given to the Buyer at closing. If the Seller does not grant possession by the date and time stated above, the Seller shall pay the Buyer the amount of \$100.00 (One Hundred Dollars) per day as liquidated damages until possession is delivered to the Buyer. The Buyer shall have all other legal remedies available for use against the Seller, to the extent allowed by law.

### PROPERTY MAINTENANCE

#### Lawn Mowing:

The Seller shall keep the lawn mowed so as to not violate tall grass/weed ordinances, and shall mow the grass within two (2) calendar days of possession by the Buyer, when the Buyer takes possession between April 1<sup>st</sup> and November 15<sup>th</sup>, subject to any drought conditions that may be present.

# REAL PROPERTY PURCHASE AGREEMENT

## Fort Wayne City Utilities

### 77 Notice of Defective Conditions:

78 The Seller certifies that no governmental agency has served notice ordering the repair or  
79 correction of any defective conditions.

80  
81 The Seller shall maintain the Property in its present condition until the Buyer takes possession.  
82 The Buyer may inspect the Property prior to closing to determine whether there is compliance with  
83 this clause. The Seller shall remove all rubbish and personal property.

### 84 85 **LOSS OR DAMAGE PRIOR TO CLOSING**

86 In the event the Property is damaged by fire, flooding, storm, vandalism, earthquake, or any other  
87 cause, prior to the closing, the parties to this Purchase Agreement shall proceed as follows:

88  
89 In the event any damage or destruction occurs, prior to closing, the Seller shall make all  
90 necessary repairs to return the Property to the condition it was in prior to the damage or destruction.  
91 The Seller shall maintain adequate property casualty insurance on the Property, and shall also be  
92 responsible for the payment of any and all insurance deductible(s). If the Property is not fully  
93 repaired prior to closing, the Buyer, at its choosing, may terminate this Agreement and the Seller  
94 shall return the earnest money, if any earnest money was given, to the Buyer within thirty (30)  
95 calendar days.

### 96 97 **BOUNDARY SURVEY**

98 The Seller shall furnish the Buyer with a boundary survey performed in accordance with I.A.C.  
99 Title 865, Rule 12, for which the corner markers of the Property are established and marked prior to  
100 the closing date. The survey shall (i) be delivered prior to the closing; (ii) certified as of the current  
101 date; (iii) be reasonably satisfactory to the Buyer; (iv) show the location of all visible improvements;  
102 (v) depict recorded easements identified by the current title commitment, and also items on the real  
103 property which indicate that an easement interest may have become established via unwritten rights;  
104 and (vi) depict the current flood zone designation of the Real Property as indicated on the current  
105 Flood Hazard Boundary Map maintained by the U.S. Department of Homeland Security, Federal  
106 Emergency Management Agency.

107  
108  The survey shall be paid for by the Buyer.

109 Or

110  The expense for the survey shall be shared equally.

111 Or

112  The requirement for a survey is waived.

### 113 114 **FLOOD HAZARD AREA**

115 The Buyer may not cancel this Purchase Agreement if the Property is located in a flood hazard  
116 zone.

### 117 118 **OTHER USE LIMITATIONS**

119 The Buyer may not terminate this Agreement if the Property is subject to building or use  
120 limitations defined by local zoning ordinances which materially affect the Buyer's intended use of  
121 the Property.

### 122 123 **INSPECTIONS**

124 The Buyer acknowledges that it has the right to obtain independent inspections disclosing the  
125 condition of the Property, including any buildings, and has been given the opportunity to order those  
126 inspections as a part of its due diligence efforts prior to concluding the transaction.

# REAL PROPERTY PURCHASE AGREEMENT

## Fort Wayne City Utilities

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\_\_\_ The Buyer **waives its right** to conduct independent inspections and releases the Seller from any and all liability.

Or

X The Buyer **reserves its right** to conduct independent inspections. All inspections are at the Buyer's expense and shall be performed by licensed independent inspectors or qualified independent contractors that shall be chosen by the Buyer, and paid for their services by the Buyer.

The Seller shall make arrangements so that all areas of the Property, including any buildings, are open and accessible for inspection.

### Inspections and Response Periods:

All inspections that Buyer intends to undertake shall be ordered by the Buyer immediately following the execution of this document. In the event that the presence of a defect is revealed, Buyer shall have 30 calendar days to respond to Seller in writing with regard to any such inspection, following which Buyer shall have 15 calendar days to request, obtain, and respond to Seller in writing with regard to any supplementary reports.

If the Buyer does not respond in writing to Seller within the above time periods with regard to a problem revealed in a report, or timely request a reasonable extension of time in writing, then the Property shall be deemed to be acceptable. Should either party fail to respond to an inspection response from the other within five calendar days, or timely request a reasonable extension of time in writing, then that inspection response is deemed accepted. Making a timely written request for an extension of time does not constitute acceptance of an inspection response, whether or not the request is granted.

In the event that Buyer reasonably believes that an inspection has revealed a defect with the Property, not disclosed by Seller prior to entering into this Purchase Agreement (and excluding routine maintenance and minor repair items), and the Seller fails to remedy the defect to the Buyer's reasonable satisfaction before closing, then Buyer may terminate this Purchase Agreement. Alternatively, Buyer may waive the right to have the defect cured prior to closing, or Buyer and Seller may agree to have the defect remedied following closing.

(Under Indiana law, a "defect" means a condition that would have a significant adverse effect on the value of the Property, that would significantly impair the health or safety of future occupants of the Property, or that if not repaired, removed, or replaced, would significantly shorten or adversely affect the expected normal life of the premises.)

### DISCLOSURES

N/A The Buyer has received and signed / waived the "Seller's Residential Real Estate Sales Disclosure" form.

N/A The Buyer has received and signed / waived the "Lead-Based Paint Certification and Acknowledgment" form.

# REAL PROPERTY PURCHASE AGREEMENT

## Fort Wayne City Utilities

### 177 TITLE WORK and DEED

178 Before closing, the Buyer shall be furnished with a title insurance commitment using the most  
179 current and comprehensive ALTA Owner's Title Insurance Policy available in an amount equal to the  
180 purchase price. In order to proceed with the transaction, the Seller shall have marketable title to the  
181 Real Property in the Seller's name. The Seller shall convey the fee simple title to the Property free  
182 and clear of any encumbrances and title defects, with the exception of any restrictions or easements of  
183 record not substantially interfering with the Buyer's planned use of the Property.  
184

#### 185 Title Insurance Fees:

186 The premium for the title insurance policy and all fees charged to prepare an Owner's Title  
187 Insurance Policy shall be paid by the Buyer.  
188

189 The costs to resolve any title issues affecting the Property so that marketable title can be  
190 conveyed shall be paid by the Seller.  
191

#### 192 Type of Deed:

193 The conveyance of the Property shall be accomplished with a Warranty Deed, subject to  
194 easements, restrictive covenants, other encumbrances of record, and taxes.  
195

### 196 REAL PROPERTY TAXES

197 All real property taxes that have been assessed for any prior calendar year that have not been paid  
198 shall be paid by the Seller. Real property taxes that have been assessed for the present year, that are  
199 due and payable in the year after closing, shall also be paid by the Seller prorated up to the day  
200 immediately prior to the closing date.  
201

202 For the purpose of determining the amount to be credited for accrued but unpaid taxes, the taxes  
203 shall be assumed to be the same as the most recent year for which taxes were billed based upon the  
204 certified tax rates. This settlement shall be final.  
205

### 206 PRORATIONS for PUBLIC UTILITIES and SPECIAL ASSESSMENTS

#### 207 Utilities and Garbage Services:

208 The Seller shall pay for all public utility and garbage service charges up to the last day of  
209 possession.  
210

#### 211 Shutting Off Utilities for Buildings to be Demolished:

212 The Seller shall cancel the accounts for all public utilities and garbage services no later than the  
213 last day of possession, and shall have the utilities shut off by the appropriate utility.  
214

#### 215 Special Assessments for Public Improvements:

216 The Seller shall pay any special assessments assessed against the Property for public  
217 improvements previously made by a governmental unit that benefit the Property. The Seller certifies  
218 that it has no knowledge of any proposed improvements which may result in assessments.  
219

220 Public improvements that will benefit the Property that are not completed as of the closing date,  
221 but will result in an assessment against the Property shall be paid by the Buyer.  
222

### 224 LEGAL JURISDICTION

225 This Purchase Agreement shall be interpreted under and according to the laws of the State of  
226 Indiana and shall be binding upon the Buyer and Seller, their respective heirs, successors, assigns

**REAL PROPERTY PURCHASE AGREEMENT**  
Fort Wayne City Utilities

227 administrators, executors, and legal representatives. All rights, duties and obligations of the parties  
228 shall survive the passing of title to, or an interest in, the Property.  
229

230 **LEGAL FEES**

231 A party to this Purchase Agreement who prevails in any legal proceeding against any other party  
232 brought in regard to this Purchase Agreement or associated transaction shall be allowed to recover  
233 court costs and reasonable attorney's fees from the other party, to the extent permitted by law.  
234

235 **SAVINGS CLAUSE**

236 If any provision contained in this Agreement is found to be illegal or unenforceable in any  
237 respect, that determination shall not affect any other provision of this Purchase Agreement.  
238

239 **OTHER STIPULATIONS**

- 240 A. All funds payable in this transaction shall be paid at the closing.  
241 B. This Agreement constitutes the only agreement between the parties, supersedes any prior  
242 arrangements, understandings, or written or oral agreements between the parties with regard  
243 to this transaction, and cannot be changed without the written consent of each party.  
244 C. The Seller certifies that the Seller is not a "Foreign Person" (pertains to an individual entity)  
245 and, therefore, is not subject to the "Foreign Investment in Real Property Tax Act."  
246 D. Buyer discloses that it does not hold an Indiana Real Estate License.  
247 E. The Seller discloses that it holds Indiana Real Estate License # \_\_\_\_\_  
248

249 **ADDITIONAL CONDITIONS:** \_\_\_\_\_  
250 \_\_\_\_\_  
251


252 This Purchase Agreement may be executed concurrently in two or more counterparts, each of  
253 which shall be considered as an original document, but all of which altogether shall be one and the same  
254 document. The parties stipulate that this Purchase Agreement may be transmitted between them by U.S.  
255 Postal Service, other service such as FedEx, courier, facsimile, or e-mail. The parties acknowledge that  
256 digitally or electronically transmitted signatures shall be considered as original signatures and are binding  
257 on the parties. The City shall keep possession of the original of the Purchase Agreement.  
258

259 By signing below, the parties to this transaction acknowledge receipt of a copy of this Purchase  
260 Agreement, and agree to the conditions, requirements, and stipulations as stated.  
261

262  
263 **SELLER APPROVAL and SIGNATURE(S):**

264 This Purchase Agreement is  ACCEPTED  REJECTED.  
265  
266

267 **219 SACKMAN LP**

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269 \_\_\_\_\_  
270 Signature

268 Christopher Gerard Mangan Date: 3/4/24  
269 \_\_\_\_\_  
270 Printed Name & Title

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**REAL PROPERTY PURCHASE AGREEMENT**

**Fort Wayne City Utilities**

277 **BUYER APPROVAL AND SIGNATURES:**

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279 **BOARD OF PUBLIC WORKS**

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282 Date: 3-26-2024

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BY:

  
Shan Gunawardena, Chair

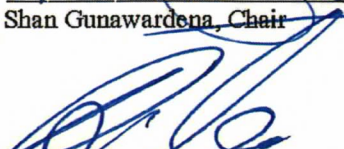
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BY:

  
Kumar Menon, Member

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BY:

ABSENT

Chris Guerrero, Member


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ATTEST:

  
Michelle Fulk-Vondran, Clerk

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Interoffice Memo

Date: April 4, 2024

To: Common Council Members

From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330

**RE: Purchase of 3.01 Acres of Vacant Land Located at 4800 Maplecrest Road, Fort Wayne, IN 46835**

**Council Introduction Date: April 9, 2024—Council District #: 1**

Background & supporting information:

City Utilities has reached an agreement to purchase 3.01 acres of undeveloped land north of the Stellhorn Plaza Shopping Center, which is located at the corner of Maplecrest Road & Stellhorn Road. The site will be used for drainage improvements to expand the capacity of Bullerman Drain, to increase its capacity and alleviate neighborhood flooding.

Owner 219 Sackman LP agreed to a purchase price of \$60,000. The map included in the purchase agreement shows the area of land that City Utilities intends to purchase.

Implications of not being approved:

If City Utilities does not purchase this land, a different area of land will need to be purchased for the drain improvements, likely at higher cost.

Justification if prior approval is being requested: Not applicable

Funding source: CUE Revenue

Attachments:

- Purchase Agreement

CC: Matthew Wirtz  
Anne Marie Smrcek  
Kristen Buell  
Jill Helfrich

**BILL NO. R-24-04-14**

**REPORT OF COMMITTEE ON CITY UTILITIES**

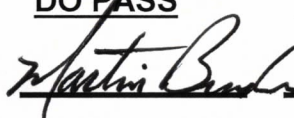







**April 16, 2024**

**Paul Ensley Chair**  
**Russ Jehl Co-Chair**  
**All Council Members**

A Resolution approving a Purchase Agreement for the acquisition of part of that certain real property located at 4800 Maplecrest Road, in Fort Wayne, Indiana, for the City of Fort Wayne, Indiana (Approved and executed by the Board of Public Works on March 26, 2024)

*Purchase Price of \$60,000.00*

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

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
<u>BENDER</u>			
<u>CHAMBERS</u>			
<u>ENSLEY</u>			
<u>FREISTROFFER</u>			
<u>HARTMAN</u>			
<u>JEHL</u>			
<u>MYERS</u>			
<u>PADDOCK</u>			
<u>TUCKER</u>			

**LANA R. KEESLING**  
**CITY CLERK**



Public Hearing Date: N/A

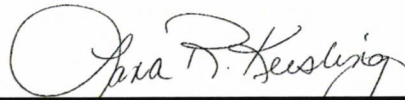
Read the first time in full and on motion by Councilperson Ensley.

Read the second time by title and referred to the City Utilities Committee.

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

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
BENDER	<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"/>
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"/>
HARTMAN	<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"/>
MYERS	<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"/>

DATED: April 23, 2024

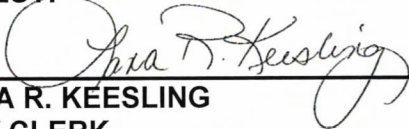


LANA R. KEESLING, CITY CLERK


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

Resolution No. R-24-04-14 on the 23rd day of April, 2024

ATTEST:

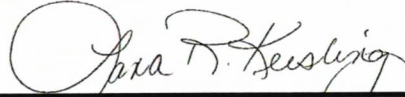


LANA R. KEESLING  
CITY CLERK



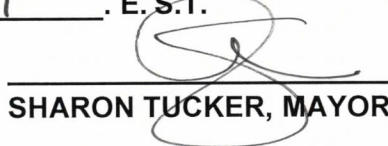
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th of April 2024, at the hour of 9:10 o'clock A.M. E.S.T.



LANA R. KEESLING, CITY CLERK

Approved and signed by me this 24th day of April 2024, at the hour of 5:56 o'clock PM E.S.T.

  
SHARON TUCKER, MAYOR