

1 **BILL NO. R-24-11-17**

2 **RESOLUTION NO. R-57-24**

3 **A RESOLUTION APPROVING A PURCHASE**
4 **AGREEMENT FOR THE ACQUISITION OF**
5 **CERTAIN REAL PROPERTY LOCATED AT 9019**
6 **STELLHORN ROAD, IN FORT WAYNE,**
7 **INDIANA, FOR THE CITY OF FORT WAYNE,**
8 **INDIANA (Approved and Executed by the Board**
9 **of Public Works on November 5, 2024).**

10 **WHEREAS**, the City of Fort Wayne, by and through its Division of
11 City Utilities (“CU”), wishes to acquire certain real property located at 9019
12 Stelhorn Road, in the City of Fort Wayne, Indiana, (the “Real Estate”), for drainage
13 improvements to expand the capacity of Bullerman Drain and alleviate
14 neighborhood flooding; and

15 **WHEREAS**, the owner of the Real Estate is Harvest Bible Chapel of
16 Fort Wayne (the “Seller”).

17 **WHEREAS**, the City of Fort Wayne, by and through its Board of
18 Public Works, approved and executed a purchase agreement to acquire the Real
19 Estate in the regularly-held meeting of the Board of Public Works on November 5,
20 2024; and

21 **WHEREAS**, the purchase price for the Real Estate is Five Hundred
22 Fifty-Nine Thousand Seven Hundred Fifty and 00/100 Dollars (\$559,750.00) (the
23 “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:**
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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

1 The City of Fort Wayne (“Buyer”) agrees to purchase the fee simple title to all of the following
2 Real Property (“Property”) for the consideration stated below subject to the conditions, requirements, and
3 stipulations described in the following Purchase Agreement.
4

5 CONTACT INFORMATION and LOCATION OF PROPERTY

6 Owner Name: Harvest Bible Chapel of Fort Wayne Inc. (“Seller”)
7 Primary Telephone: (260) 627-2720
8

9 Contact: Executive Pastor Adam Boylan
10 Cell: (260) 415-4085
11 E-mail: adam.boylan@redemptionfw.org
12

13 Mailing Address: 9019 Stellhorn Road
14 City/State/Zip: Fort Wayne, IN 46815
15

16 PARCEL DETAILS

17 Street Address: 9019 Stellhorn Road
18 City/State/Zip: Fort Wayne, IN 46815
19

20 Latest Deed of Record: Allen County Recorder’s document number 2019028839
21 Tax ID Number: 02-08-23-482-009.000-072
22 Size (per tax card): 4.38 acres
23

24 PURCHASE PRICE

25 The City agrees to pay to the Seller the total purchase amount of **\$559,750.00** (Five Hundred
26 **Fifty Nine Thousand, Seven Hundred Fifty Dollars and Zero Cents**) for the Property, which
27 **includes the entire parcel of land and accessory buildings.**
28

29 NOTE: The Seller certifies that no substantial changes have occurred to the Property to reduce the
30 value determined by the appraisals, as of the effective date of this Purchase Agreement.
31

32 EXPIRATION OF OFFER

33 This Purchase Agreement shall be executed and returned to the City no later than **12 noon** on
34 **November 1, 2024**, otherwise this Purchase Agreement shall be null and void and both parties shall
35 be released from the transaction.
36

37 APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL

38 This transaction is subject to approval by both the Board of Public Works and the Common
39 Council of the City of Fort Wayne, Indiana. In the event that either body does not approve this
40 transaction, the transaction shall be terminated and both parties shall be released from this Purchase
41 Agreement.
42

43 CLOSING

44 Closing Date:

45 The closing date for this transaction shall be on or before **December 17, 2024**, or this Agreement
46 shall terminate unless an extension of time is mutually agreed to in writing. Any change in the closing
47 date shall be agreed to in writing by both parties.

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

50 Location of Closing:

51 The closing shall be held at **Titan Title** located at **209 W. Wayne St, Fort Wayne, Indiana 46802.**

52
53 Closing Fees:

54 All fees charged by the closing agent, including document preparation and recording fees shall be
55 paid by the **City of Fort Wayne.**

56
57 **EARNEST MONEY**

58 If the City of Fort Wayne is the Purchaser:

59 The **City** as a policy does not pay earnest money.

60
61 **METHOD OF PAYMENT**

62 The entire amount shall be paid in **cash.**

63
64 Both parties agree that all funds delivered to the closing agent's escrow account shall be such that
65 the closing agent shall be able to distribute all funds in accordance with I.C. 27-07-3.7-1 through 27-
66 07-3.7-1-10, inclusive. Furthermore, all funds sent from one source, when the amount is **\$10,000.00**
67 or greater, shall be sent in the form of an irrevocable wire transfer to the escrow account of the
68 closing agent, and all funds under **\$10,000.00** from one source shall be guaranteed to be "Good
69 Funds" as defined by the aforesaid Indiana Code.

70
71 **POSSESSION**

72 Possession of the Property shall be given to the Buyer at approximately three (3) months after
 closing. During the free rent period of 3 months, Seller shall maintain and upkeep the facility. 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**
73 **(One Hundred Dollars)** per day as liquidated damages until possession is delivered to the **Buyer.**
74 The **Buyer** shall have all other legal remedies available for use against the **Seller**, to the extent
75 allowed by law.

76
77
78 **PROPERTY MAINTENANCE**

79 Lawn Mowing:

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

84
85 Notice of Defective Conditions:

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

88
89 The **Seller** shall maintain the Property in its present condition until the **Buyer** takes possession.
90 The **Buyer** may inspect the Property prior to closing to determine whether there is compliance with
91 this clause. The **Seller** shall remove all rubbish and personal property.

92
93 **LOSS OR DAMAGE PRIOR TO CLOSING**

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

96
97 In the event any damage or destruction occurs, prior to closing, the **Seller** shall make all
98 necessary repairs to return the Property to the condition it was in prior to the damage or destruction.
99 The **Seller** shall maintain adequate property casualty insurance on the Property, and shall also be

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

100 responsible for the payment of any and all insurance deductible(s). If the Property is not fully
101 repaired prior to closing, the **Buyer**, at its choosing, may terminate this Agreement and the **Seller**
102 shall return the earnest money, if any earnest money was given, to the **Buyer** within thirty (30)
103 calendar days.
104

105 **BOUNDARY SURVEY**

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

115
116 The survey shall be paid for by the **Buyer**.
117

118 **FLOOD HAZARD AREA**

119 The **Buyer** may not cancel this Purchase Agreement if the Property is located in a flood hazard
120 zone.
121

122 **OTHER USE LIMITATIONS**

123 The **Buyer** may not terminate this Agreement if the Property is subject to building or use
124 limitations defined by local zoning ordinances which materially affect the **Buyer's** intended use of
125 the Property.
126

127 **INSPECTIONS**

128 The **Buyer** acknowledges that it has the right to obtain independent inspections disclosing the
129 condition of the Property, including any buildings, and has been given the opportunity to order those
130 inspections as a part of its due diligence efforts prior to concluding the transaction.
131

132 The **Buyer** reserves its right to conduct independent inspections. All inspections are at the
133 **Buyer's** expense and shall be performed by licensed independent inspectors or qualified independent
134 contractors that shall be chosen by the **Buyer**, and paid for their services by the **Buyer**.
135

136 The **Seller** shall make arrangements so that all areas of the Property, including any buildings, are
137 open and accessible for inspection.
138

139 Inspections and Response Periods:

140 All inspections that Buyer intends to undertake shall be ordered by the **Buyer** immediately
141 following the execution of this document. In the event that the presence of a defect is revealed, **Buyer**
142 shall have 5 calendar days to respond to **Seller** in writing with regard to any such inspection,
143 following which Buyer shall have 5 calendar days to request, obtain, and respond to **Seller** in writing
144 with regard to any supplementary reports.
145

146 If the Buyer does not respond in writing to Seller within the above time periods with regard to a
147 problem revealed in a report, or timely request a reasonable extension of time in writing, then the
148 Property shall be deemed to be acceptable. Should either party fail to respond to an inspection
149 response from the other within five calendar days, or timely request a reasonable extension of time in

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

150 writing, then that inspection response is deemed accepted. Making a timely written request for an
151 extension of time does not constitute acceptance of an inspection response, whether or not the request
152 is granted.
153

154 In the event that Buyer reasonably believes that an inspection has revealed a defect with the
155 Property, not disclosed by Seller prior to entering into this Purchase Agreement (and excluding
156 routine maintenance and minor repair items), and the Seller fails to remedy the defect to the Buyer's
157 reasonable satisfaction before closing, then Buyer may terminate this Purchase Agreement.
158 Alternatively, Buyer may waive the right to have the defect cured prior to closing, or Buyer and Seller
159 may agree to have the defect remedied following closing.
160

161 (Under Indiana law, a "defect" means a condition that would have a significant adverse effect on
162 the value of the Property, that would significantly impair the health or safety of future occupants of
163 the Property, or that if not repaired, removed, or replaced, would significantly shorten or adversely
164 affect the expected normal life of the premises.)
165

166 DISCLOSURES

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168 The Buyer has waived the "Seller's Residential Real Estate Sales Disclosure" form.
169

170 The Buyer has waived the "Lead-Based Paint Certification and Acknowledgment" form.
171

172 TITLE WORK and DEED

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

180 Title Insurance Fees:

181 The premium for the title insurance policy and all fees charged to prepare an Owner's Title
182 Insurance Policy shall be paid by the **Buyer**.
183

184 The costs to resolve any title issues affecting the Property so that marketable title can be
185 conveyed shall be paid by the **Buyer**.
186

187 Type of Deed:

188 The conveyance of the Property shall be accomplished with a Warranty Deed, subject to
189 easements, restrictive covenants, other encumbrances of record, and taxes.
190

191 REAL PROPERTY TAXES

192 All real property taxes that have been assessed for any prior calendar year that have not been paid
193 shall be paid by the **Seller**. Real property taxes that have been assessed for the present year, that are
194 due and payable in the year after closing, shall also be paid by the **Seller** prorated up to the day
195 immediately prior to the closing date.
196

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

REAL PROPERTY PURCHASE AGREEMENT

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PRORATIONS for PUBLIC UTILITIES and SPECIAL ASSESSMENTS

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Utilities and Garbage Services:

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

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Shutting Off Utilities for Buildings to be Demolished:

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

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Special Assessments for Public Improvements:

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

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

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LEGAL JURISDICTION

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This Purchase Agreement shall be interpreted under and according to the laws of the State of Indiana and shall be binding upon the **Buyer** and **Seller**, their respective heirs, successors, assigns administrators, executors, and legal representatives. All rights, duties and obligations of the parties shall survive the passing of title to, or an interest in, the Property.

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LEGAL FEES

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

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SAVINGS CLAUSE

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

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233

OTHER STIPULATIONS

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A. All funds payable in this transaction shall be paid at the closing.

235

B. This Agreement constitutes the only agreement between the parties, supersedes any prior arrangements, understandings, or written or oral agreements between the parties with regard to this transaction, and cannot be changed without the written consent of each party.

236

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238

C. The **Seller** certifies that the **Seller** is not a "Foreign Person" (pertains to an individual entity) and, therefore, is not subject to the "Foreign Investment in Real Property Tax Act."

239

240

D. **Buyer** discloses that it does not hold an Indiana Real Estate License.

241

E. The **Seller** discloses that it holds Indiana Real Estate License # _____.

242

243

ADDITIONAL CONDITIONS: Seller shall grant Buyer a permanent easement on the southerly 40 feet of neighboring residential parcels 02-08-23-482-007.000-072 and 02-08-23-482-008.000-072, for use as a public right of way for trails and public utilities, in a form to be provided by Buyer. Buyer shall be paid on a separate bill of sale for the easement in the amount of \$4,439.32 (or \$38.27 per linear foot of easement right). Buyer will furnish the legal description, easement plat, and other surveying deliverables needed for such easement.

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In addition, the Seller shall retain full ownership and all rights to remove, replace, or alter any and all currently installed on the property, prior to or at the time of closing. The Seller shall have the right to disconnect and remove any such systems or equipment at their discretion without providing replacements

251

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REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

253 or adjustments unless otherwise stipulated in a separate agreement. The Buyer acknowledges that all
254 HVAC mechanical items, and fixtures shall remain the property of the Seller and agrees not to contest this
255 ownership in any subsequent claims or actions.
256

257 Buyer reserves the right to terminate this Purchase Agreement solely in the event that Buyer is unable to
258 complete the purchase of the property located at 9600 St. Joe Road (the "New Facility") for any reason
259 beyond Buyer's reasonable control. Should the purchase of the New Facility not proceed to closing, Buyer
260 may, at its sole discretion, terminate this Agreement by providing written notice to Seller immediately
261 following the failure of the New Facility transaction.
262

263 Upon termination under this provision, neither party shall have any further obligation or liability to the
264 other under this Agreement. This shall be the Buyer's only termination right, and no other conditions shall
265 entitle Buyer to terminate this Agreement.

[EXECUTIONS AND ATTESTATIONS ON FOLLOWING PAGES]

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities


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

256 By signing below, the parties to this transaction acknowledge receipt of a copy of this Purchase
257 Agreement, and agree to the conditions, requirements, and stipulations as stated.
258

259
260 **SELLER APPROVAL and SIGNATURE(S):**
261

262 This Purchase Agreement is _____ **ACCEPTED** _____ **REJECTED**.
263

264
265 **HARVEST BIBLE CHAPEL OF FORT WAYNE INC.**
266

267  _____ Adam Boylan Executive Pastor Date: 10/31/2024
268 Signature _____ Printed Name & Title _____

REAL PROPERTY PURCHASE AGREEMENT
Fort Wayne City Utilities

269 **BUYER APPROVAL AND SIGNATURES:**

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271 BOARD OF PUBLIC WORKS

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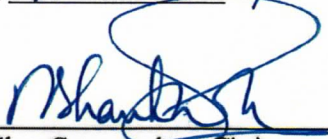
274 Date: 11-5-2024

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BY: 
Shan Gunawardena, Chair

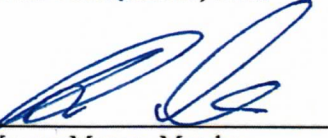
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BY: 
Kumar Menon, Member


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BY: 
Chris Guerrero, Member

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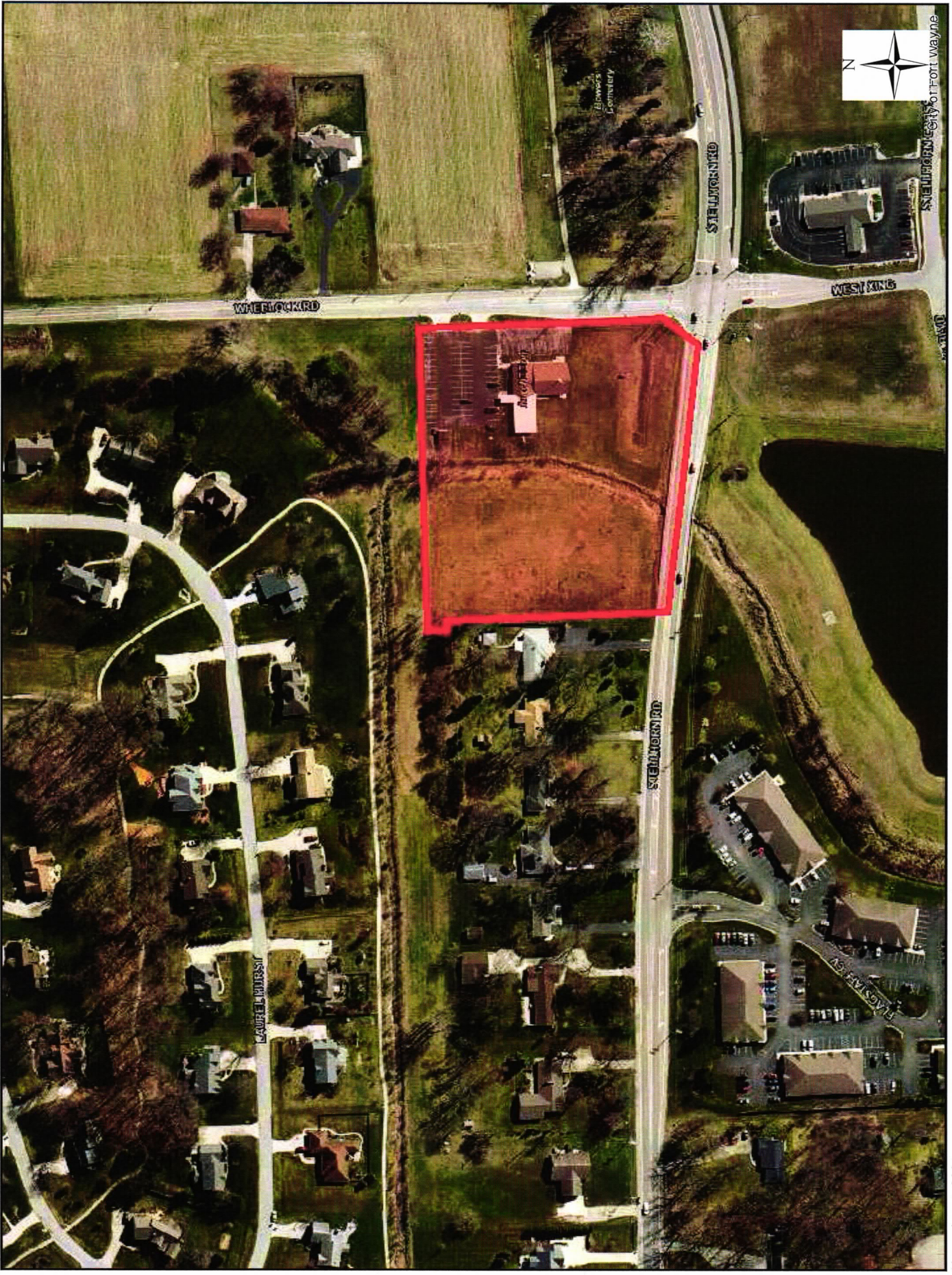
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ATTEST: 
Michelle Fulk-Vondran, Clerk

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November 4, 2024

This map is intended for general reference purposes only. The information displayed herein is not guaranteed to be completely accurate or all inclusive.

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Interoffice Memo

Date: November 4, 2024
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: Purchase of 4.38 Acre Property Located at 9019 Stellhorn Rd, Fort Wayne, IN 46815

Council Introduction Date: November 12, 2024—Council District #: 1

Background & supporting information:

City Utilities has reached an agreement to purchase 4.38 acres of land at the northwest corner of Stellhorn Road and Wheelock 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 Harvest Bible Chapel of Fort Wayne agreed to a purchase price of \$559,750.

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
Eric Ruppert
Anne Marie Smrchek
Kristen Buell
Jill Helfrich

BILL NO. R-24-11-17

REPORT OF COMMITTEE ON FINANCE

November 19, 2024

Marty Bender Chair

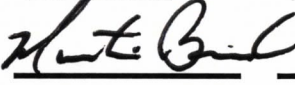
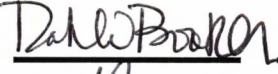




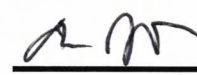


Rohli Booker Co-Chair

All Council Members

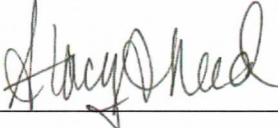
A Resolution approving a Purchase Agreement for the acquisition of certain real property located at 9019 Stellhorn Road, in Fort Wayne, Indiana, for the City of Fort Wayne, Indiana (Approved and Executed by the Board of Public Works on November 5, 2024)

Purchase Price of \$559,750.00

COMMITTEE ON FINANCE 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>BOOKER</u>			
<u>CHAMBERS</u>			
<u>ENSLEY</u>			
<u>FREISTROFFER</u>			
<u>HARTMAN</u>			
<u>JEHL</u>			
<u>MYERS</u>			
<u>PADDOCK</u>			

**STACY REED
DEPUTY CITY CLERK**



Public Hearing Date: N/A

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

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

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

DATED: November 26, 2024

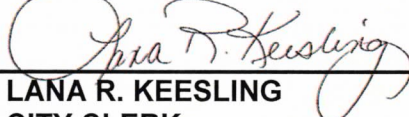


 LANA R. KEESLING, CITY CLERK

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

Resolution No. R-24-11-17 on the 26th day of November, 2024

ATTEST:



 LANA R. KEESLING
 CITY CLERK



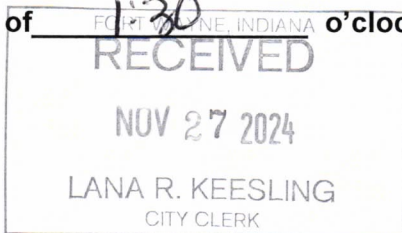
 PRESIDING OFFICER

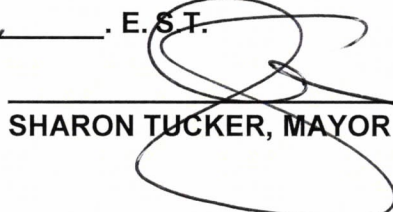
Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th of November 2024, at the hour of 9:00 o'clock A.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 27th day of November 2024, at the hour of 1:30 o'clock P.M. E.S.T.





 SHARON TUCKER, MAYOR