

A RESOLUTION APPROVING THE PURCHASE OF TWO (2) PARCELS OF CERTAIN REAL ESTATE LOCATED AT 810 & 816 LILLIAN AVENUE, FORT WAYNE, INDIANA, FOR THE CITY OF FORT WAYNE, FROM ADAM GERIG BY AND THROUGH THE DIVISION OF PUBLIC WORKS - RESOLUTION #111-11-5-24-2.

WHEREAS, the City of Fort Wayne, through its Division of Public Works – Resolution #111-11-5-24-2, desires to acquire two (2) properties located at 810 & 816 Lillian Avenue, Fort Wayne, Indiana, specifically described in the Purchase Agreement, Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the purchase price for the properties is Two Hundred Sixty-One Thousand One Hundred Twenty-Five Dollars (\$261,125.00); and

WHEREAS, the Purchase Agreement between Adam Gerig and the City of Fort Wayne, by and through its Board of Public Works, for the properties located in Fort Wayne, Indiana, is submitted to the Common Council for approval per Sec.37-25 of the City of Fort Wayne Code of Ordinances.

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

SECTION 1. The acquisition of two (2) parcels of real estate by the City of Fort Wayne through its Division of Public Works, located at 810 & 816 Lillian Avenue, Fort Wayne, Indiana, specifically described in the Purchase Agreement, Exhibit "A", is hereby approved and agreed to. The appropriate officials of the City are hereby authorized to execute all documents necessary to accomplish said donation.

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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

**APPRAISAL REPORT
A SINGLE-FAMILY RESIDENTIAL PROPERTY
810 LILLIAN AVENUE
FORT WAYNE, INDIANA 46808**

OWNER: ADAM GERIG

**PREPARED FOR:
THE CITY OF FORT WAYNE
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 CERTIFIED GENERAL APPRAISER
LICENSE NUMBER CG42300061**

**VALUATION DATE:
MARCH 5, 2024**

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

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

Verne V. Mitchell, III, MAI

March 8, 2024

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

RE: Appraisal of: A single-family residential home
810 Lillian Avenue
Fort Wayne, IN 46808

Owner: Adam Gerig

Dear Mr. Carmichael:

Responding to your request, we have appraised the above referenced property which is located at the northeast quadrant of the intersection of Lillian Avenue and Sherman Boulevard on the northwest side of Fort Wayne, Indiana. The purpose of this appraisal is to form an opinion of the market value of the property's fee simple estate conveyable interest. Uniform Standards of Professional Appraisal Practice (USPAP) have 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.

The property was viewed on the exterior February 29, 2024 and March 5, 2024. The interior was not viewed. The effective date of value is March 5, 2024. The analysis in this report was completed on March 5, 2024.

The highest and best use of the property is for a single family residential type of usage and the valuation analysis has been developed based upon this opinion.

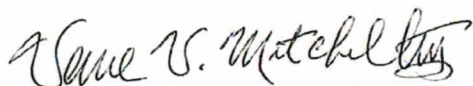
Our opinion of the property's market value is:

ONE HUNDRED TEN THOUSAND DOLLARS
(\$110,000)

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

Respectfully submitted,

VERNE V. MITCHELL & ASSOCIATES, INC.



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



Alexander C. Mitchell
Indiana Certified General Appraiser
License Number CG42300061

VVM/ms

Appraisal Valuation
Of
Gerig Property
810 Lillian Avenue
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
February 29, 2024
(Date of Inspection – Exterior Only)

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

March 18, 2024

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 Gerig Property Located at 810 Lillian Avenue in Fort Wayne, Allen County, Indiana

As you requested and agreed upon via email, I have personally inspected (exterior only) 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 February 29, 2024, the date of inspection.

It is noted that only an exterior inspection was completed, in that an arrangement for an interior inspection could not be completed. This appraiser spoke with Ed Arevalo of AG Rentals, who leases the subject dwelling for the property owner. Mr. Arevalo was to call back once he got ahold of the tenant to arrange an interior inspection. Two weeks had passed since the conversation with no phone call received. Therefore, based on a conversation with the client, the property is being appraised based on an exterior inspection and utilization of the subject's property tax record card for interior finish and condition.

This appraisal report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the 2024-2025 Uniform Standards of Professional Appraisal Practice. This report is being completed based on the Scope of Work detailed on page 13 of this report. I am not responsible for unauthorized use of this report.

After researching and analyzing the available information considered pertinent to value, and considering its effect on value, I am of the opinion that the subject property had the following fee simple estate market value as of February 29, 2024 (date of exterior inspection):

ONE HUNDRED SEVEN THOUSAND DOLLARS (\$107,000)

Extraordinary Assumption(s)

This term is defined on page 4 in the 2024-2025 Uniform Standards of Professional Appraisal Practice 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.
2. An interior inspection could not be arranged with the leasing agent (Ed Arevalo) with AG Rentals. Per discussion with the client, only an exterior inspection was completed. The interior condition of the subject dwelling is based upon the subject's property tax record card, which indicates the interior to be in average condition. At the time of inspection, the exterior was considered to be in below average condition.

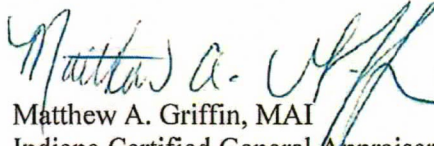
Hypothetical Condition(s)

This term is defined on page 4 in the 2024-2025 Uniform Standards of Professional Appraisal Practice 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

Appraisal Valuation
Of
Gerig Property
816 Lillian Avenue
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
February 29, 2024
(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

March 18, 2024

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 Gerig Property Located at 816 Lillian Avenue 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 February 29, 2024, 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 2024-2025 Uniform Standards of Professional Appraisal Practice. This report is being completed based on the Scope of Work detailed on page 15 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 considering its effect on value, I am of the opinion that the subject property had the following fee simple estate market value as of February 29, 2024 (date of inspection):

ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$165,000)

Extraordinary Assumption(s)

This term is defined on page 4 in the 2024-2025 Uniform Standards of Professional Appraisal Practice 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.

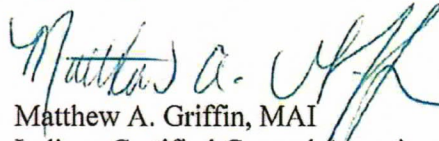
Hypothetical Condition(s)

This term is defined on page 4 in the 2024-2025 Uniform Standards of Professional Appraisal Practice 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

**APPRAISAL REPORT
A SINGLE-FAMIL RESIDENTIAL PROPERTY
816 LILLIAN AVENUE
FORT WAYNE, INDIANA 46808**

OWNER: SUZY HERNANDEZ

**PREPARED FOR:
THE CITY OF FORT WAYNE
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 CERTIFIED GENERAL APPRAISER
LICENSE NUMBER CG42300061**

**VALUATION DATE:
MARCH 5, 2024**

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

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

Verne V. Mitchell, III, MAI

March 8, 2024

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

RE: Appraisal of: A single-family residential home
816 Lillian Avenue
Fort Wayne, IN 46808

Owner: Suzy Hernandez

Dear Mr. Carmichael:

Responding to your request, we have appraised the above referenced property which is located at the northeast quadrant of the intersection of Lillian Avenue and Sherman Boulevard on the northwest side of Fort Wayne, Indiana. The purpose of this appraisal is to form an opinion of the market value of the property's fee simple estate conveyable interest. Uniform Standards of Professional Appraisal Practice (USPAP) have 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.

The property was viewed from the interior and exterior on February 29, 2024 by Alexander Mitchell. The property was viewed from the road on March 5, 2024 by both Verne Mitchell and Alexander Mitchell. This is the effective date of value. The analysis in this report was completed on March 5, 2024.

The highest and best use of the property is for a residential type of usage and the valuation analysis has been developed based upon this opinion.

Our opinion of the property's market value is:

ONE HUNDRED SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS
(\$162,500)

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

Respectfully submitted,

VERNE V. MITCHELL & ASSOCIATES, INC.



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



Alexander C. Mitchell
Indiana Certified General Appraiser
License Number CG42300061

VVM/ms

Resolution No. 111-11-5-24-2

A RESOLUTION APPROVING THE PURCHASE AGREEMENT FOR THE ACQUISITION OF REAL ESTATE LOCATED AT 810 & 816 LILLIAN AVENUE, FORT WAYNE, INDIANA, BETWEEN THE CITY OF FORT WAYNE, INDIANA AND ADAM GERIG

WHEREAS, The City of Fort Wayne Board of Public Works wishes to purchase two (2) parcels of real estate located in Fort Wayne, Indiana and more particularly described as:

The East 40 feet of Lot Numbered 475 Pfeiffer Place Second Addition to the City of Fort Wayne, according to the Recorded Plat thereof, as recorded in the Office of the Recorder of Allen County, Indiana.

Excepting:

The North 100.8 feet of the East 40 feet of Lot Number 475 in Pfeiffer Place Second Addition to the City of Fort Wayne, according to the plat thereof recorded in Plat Record 5, page 80, in the Office of the Recorder of Allen County, Indiana.

Commonly Known As: 810 Lillian Avenue, Fort Wayne, Indiana 46808
PIN: 02-07-35-151-037.000-074

The West 40 feet of Lot Number 475 in Pfeiffer Place Second Addition to the City of Fort Wayne, according to the Recorded Plat thereof, in the Office of the Recorder of Allen County, Indiana.

Commonly Known As: 816 Lillian Avenue, Fort Wayne, Indiana 46808
PIN: 02-07-35-151-036.000-074

WHEREAS, Adam Gerig wishes to voluntarily sell the Real Estate to the City for an agreed upon purchase price of Two Hundred Sixty-One Thousand One Hundred Twenty-Five Dollars (\$261,125.00).

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE INDIANA:

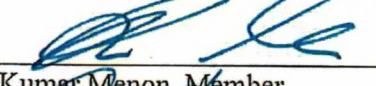
SECTION 1. The Board of Public Works of the City of Fort Wayne, Indiana, hereby approves the purchase of the above-named property, following all applicable state statutes. The Property Manager of the City is hereby authorized to execute all documents necessary to accomplish said purchase.

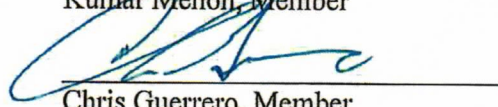
SECTION 2. This resolution shall be effective upon adoption.

Signed this 5 day of November 2024.

**CITY OF FORT WAYNE
BOARD OF PUBLIC WORKS**


Shan Gunawardena, Chair


Kumar Menon, Member


Chris Guerrero, Member

Attest: 
Michelle Fulk-Vondran, Clerk

REAL ESTATE PURCHASE AGREEMENT

1. This Real Estate Purchase Agreement (“**Agreement**”) is made to be effective the 17th day of October, 2024 (the “**Effective Date**”), by and between Adam Gerig, individually (“**Seller**”) and the City of Fort Wayne, Indiana, an Indiana municipal corporation, or its nominee, successors or assigns (“**Buyer**”).
2. **PARTIES:** Seller and Buyer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.
3. **PROPERTY:** Seller agrees to sell and convey to Buyer, and Buyer agrees to buy from Seller the real properties depicted on Exhibit A and Exhibit B attached hereto and incorporated herein, consisting of approximately 0.26 total acres, with existing site improvements, and all privileges and appurtenances pertaining thereto, including but not limited to all of Seller's right, title, and interest in and to all easements, adjacent streets, utility reservations, alleys, rights of way, strips and gores of land, mineral rights, water and water rights, wells, well rights and permits, water and sewer taps, sanitary or storm sewer capacity or reservations, rights under utility agreements with any applicable governmental or quasi-governmental entities or agencies with respect to the providing of utility services to such real property, tenements, hereditaments, privileges, licenses and appurtenances, reversions, and remainders in any way belonging, remaining, or appertaining thereto and together with all improvements, fixtures, personal property, trees, timber, or other crops and plants and minerals located thereunder or thereon (collectively referred to as the “**Properties**”).
4. **PRICE:** The net purchase price for the Properties shall be Two Hundred and Sixty-One Thousand One Hundred and Twenty-Five and 00/100 Dollars (\$261,125.00) (the “**Purchase Price**”). The Purchase Price shall be payable at Closing (as defined below) and subject to the proration and adjustments hereinafter described and in accordance with the terms and conditions stated in this Agreement.
5. Intentionally omitted.
6. **EARNEST MONEY:** Five Thousand and 00/100 Dollars (\$5,000.00) shall be deposited by Buyer, as “**Earnest Money**,” with the Title Company (as hereinafter defined) in its capacity as escrow agent (“**Escrow Agent**”) within five (5) business days after the Effective Date of this Agreement. If this Agreement is terminated by Buyer prior to the expiration of the Due Diligence Period (as defined in **Section 9** herein), as the same may be extended, or pursuant to a Seller Default (as hereinafter defined), the Earnest Money shall be immediately returned to Buyer. The Earnest Money and any Additional Earnest Money (as hereinafter defined) shall be credited to the Purchase Price at Closing (as hereinafter defined). Upon expiration of the Due Diligence Period, as the same may be extended, the Earnest Money shall not be refundable to Buyer (except as otherwise set forth herein in connection with a Seller Default or the failure of a closing condition) and shall be payable to Seller in the event that Buyer does not close on the purchase of the Properties. The Earnest Money and any Additional Earnest Money, together with any and all interest earned thereon, shall be deemed a part of the Earnest Money for all purposes under this Agreement.
7. **CLOSING:** Subject to the provisions of this Agreement, the closing of the sale and purchase of the Properties (the “**Closing**”) shall take place via escrow with the Escrow Agent no later than thirty (30) days after the expiration of the Due Diligence Period, as the same may be extended, or on such earlier date (which may be prior to or following the expiration of the Due Diligence Period) chosen

by Buyer in its sole and absolute discretion, provided that Buyer provides Seller with ten (10) days prior written notice, which day shall be the "Closing Date."

8. POSSESSION: Possession of the Properties shall be delivered to Buyer on the Closing Date free of all third-party interests except those detailed in any Permitted Exceptions (as hereinafter defined), in their present condition, ordinary wear and tear excepted and damage caused by Buyer's Examinations and casualty excepted as provided in **Section 10** below.

9. DUE DILIGENCE PERIOD:

- A. Buyer shall have ninety (90) days following the Effective Date (the "Due Diligence Period") to conduct such due diligence as Buyer may in its sole judgment desire, including but not limited to engineering studies, surveys, soil tests, environmental assessments, inspections, and other examinations (collectively, "Examinations"); and to obtain all necessary development and governmental/quasi-governmental approvals required to purchase and develop the Properties for Buyer's intended use, including but not limited to City of Fort Wayne Common Council approval, proper zoning approvals, architectural/aesthetic/visual approvals, development plan approvals, variance of use and/or development standards, annexation, incentives, entitlements, tax abatements, and building permits (collectively, the "Government Approvals") for Buyer's proposed development of the Properties for its intended use.
- B. Buyer's obligations under this Agreement shall be conditioned upon Buyer's review and approval, in its sole and absolute discretion, of the Seller Documents (as hereinafter defined) which shall be delivered to Buyer within ten (10) business days following the Effective Date and the Properties and all aspects thereof, including by way of illustration but not limitation, all physical and environmental matters relating to the Properties. If Buyer is not satisfied, in its sole and absolute discretion, that it has been or likely will be able to obtain the Government Approvals, including but not limited to zoning, incentives, and plan commission approvals, or to satisfy the other conditions of this **Section 9**, before expiration of the Due Diligence Period, Buyer may either: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) elect to extend the Due Diligence Period for a maximum of two (2) consecutive thirty (30) day periods (each a "Due Diligence Extension Period"). In the event Buyer elects to exercise the first Due Diligence Extension Period, Buyer shall provide Seller with written notice of its election prior to expiration of the Due Diligence Period. In the event Buyer elects to exercise the second Due Diligence Extension Period, Buyer shall provide Seller with written notice of its election prior to the expiration of the first Due Diligence Extension Period.
- C. Upon commencement of the Due Diligence Period and throughout the term of this Agreement, Buyer and its representatives and agents shall have the right to enter upon the Properties to perform and complete the activities and investigations set forth herein. The Examinations are to be made at Buyer's expense, and Buyer shall be liable for any damage (ordinary wear and tear excepted) caused to the Properties by Buyer or Buyer's agents during the Examinations. Further, Buyer agrees to indemnify and hold harmless Seller from and against any damages or claims for injuries to any persons or to the Properties that arise as a direct result of the Examinations, except to the extent such damages or claims are caused by or arise from (i) preexisting conditions, (ii) Hazardous Materials not first placed on the Properties by Buyer, its agents, or representatives, (iii) mere discovery of existing

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

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

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

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

and that all such utilities are of sufficient size and capacity for Buyer's intended use of the Properties.

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

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

10. TAXES: All real property taxes assessed for any prior calendar year and remaining unpaid, shall be the obligation of Seller, and all taxes assessed for the year of Closing and payable in the following year shall be prorated between Seller and Buyer on a calendar year basis as of the Closing Date. If the taxes for the Properties have not been determined at the Closing of the transaction, said taxes shall be assumed to be the same as the prior year for the purpose of such proration and a credit at Closing shall be given to Buyer for taxes not due and payable as of the Closing Date, but accruing prior to the Closing Date.

11. RISK OF LOSS AND INSURANCE: Except as otherwise provided in the Access Agreement, Seller shall bear the entire risk of loss of the Properties until Closing. Seller's insurance shall be canceled as of the Closing Date, and Buyer shall be responsible for providing its own insurance. In the event any damage or destruction to the Properties is not fully repaired prior to Closing, Buyer, at its option, may either (a) terminate this Agreement, or (b) elect to close the transaction, in which event Seller's right to all insurance proceeds resulting from such damage or destruction shall be assigned in writing by Seller to Buyer, and Seller shall reimburse Buyer for any deductible amount.

12. SURVEY: Buyer shall obtain, at Buyer's expense, a staked survey of the Properties, which survey shall comply with Minimum Standard Detail Requirements meeting the current accuracy standards

for ALTA/NSPS Land Title Surveys (the "Survey"). Buyer shall deliver to Seller, a copy of the Survey within five (5) days of Buyer's receipt thereof. The Survey shall be certified as of a current date by a surveyor registered in the State of Indiana and shall show the exact location of all improvements, building setback lines, easements, rights-of-way, and encroachments affecting the Properties, and all other matters apparent thereon, and the relation of the Properties to all adjacent properties and public thoroughfares. Further, the Survey shall reflect whether the Properties are located in a designated flood zone area and shall certify the gross acreage of the Properties. The Survey legal descriptions (as well as the historic deed description) of the Properties shall be used in Seller's deed conveying the Properties to Buyer.

13. **TITLE:** Buyer shall obtain, at Seller's expense, a Commitment for an ALTA Owner's policy of Title Insurance with extended coverage (the "Commitment") issued by _____ Centurion Land Title ("Title Company"). Buyer shall deliver to Seller a copy of the Commitment within five (5) days of Buyer's receipt thereof.

14. **TITLE AND SURVEY APPROVAL:** If Buyer has an objection to items disclosed in the Commitment or the Survey (as the same are updated from time to time), Buyer shall make written objections to Seller within thirty (30) days of the date of delivery to Seller of the Commitment, the recorded documents and the Survey (or applicable update thereof which disclosed additional matters). If no such objections are made, Buyer shall be deemed to have waived all objections to matters disclosed in the Commitment, other than liens of a monetary nature which may be removed by payment of a liquidated sum ("**Permitted Exceptions**"). If Buyer makes such objections, Seller shall have fifteen (15) days from the date such objections are disclosed to cure the same. If the objections are not satisfied within such time period, Buyer may either (a) terminate this Agreement by written notice to Seller and Escrow Agent prior to Closing and Escrow Agent shall promptly release the Earnest Money to Buyer, or (b) waive the unsatisfied objections (which shall be added to the "Permitted Exceptions") and close the transaction in accordance with this Agreement. Any endorsements to the Commitment or the Title Policy and any Mortgagee's Policy requested by Buyer shall be at Buyer's expense.

15. **PRORATIONS AND SPECIAL ASSESSMENTS:** Any and all income and ordinary operating expenses of the Properties, including, but not limited to, rent and public utility charges, if any, shall be prorated as of the day before the Closing Date. Any special assessments applicable to the Properties for municipal improvements due and payable prior to the Closing Date and which benefit the Properties shall be paid by Seller. Buyer will assume and agree to pay all special assessments for municipal improvements which become due and payable on and after the Closing Date. Notwithstanding the foregoing, Buyer shall not be obligated for payments under any management, service or other contractual agreements affecting the Properties and the same shall be terminated prior to Closing unless Buyer expressly elects to assume the same.

In the event any adjustments pursuant to this paragraph or **Section 10** are determined to be erroneous, then either Party who is entitled to additional monies shall invoice the other Party for such additional amounts as may be owing, and such amounts shall be paid within ten (10) days from the receipt of any such invoice; provided that no amounts may be so billed following the expiration

of one (1) year after the date of Closing. Nothing contained in this **Section 15** shall prevent either Party from disputing any claim made by the other Party that an adjustment made at Closing was erroneous, so long as such claim is made within one (1) year following Closing.

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

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

- 16. SALES EXPENSES:** Seller and Buyer agree that all sales expenses are to be paid and satisfied in cash prior to or at the Closing.
- A. **SELLER'S EXPENSES:** In addition to the prorations provided in **Sections 10 and 15**, Seller agrees to pay all costs of releasing existing loans and recording the releases; and the following costs: the premium for the Owner's Title Insurance Policy; costs of any endorsements to the Owner's Title Insurance Policy or Mortgagee's Title Policy; the fees of Escrow Agent; taxes accruing as of the Closing Date; and other expenses not stipulated to be paid by Buyer under other provisions of this Agreement.
- B. **BUYER'S EXPENSES:** In addition to the prorations provided in **Sections 10 and 15**, Buyer agrees to pay all expenses incident to any loan obtained by Buyer (e.g. loan commitment fees, preparation of note, mortgage, and other loan documents, recording fees, Mortgagee's Title Policy); the cost of the Survey; any and all closing fees; and other expenses to be paid by Buyer under other provisions of this Agreement.
- 17. DEFAULT:** If Buyer breaches this Agreement and is in default (a "**Buyer Default**"), Seller may either (i) waive the Buyer Default and continue Seller's performance under this Agreement, or (ii) terminate this Agreement and receive as its sole remedy the Earnest Money as liquidated damages, in which event Seller shall have no further right or remedy at law or in equity against Buyer. Seller shall have the option, in the event the termination of this Agreement resulting from a Buyer Default, to reimburse Buyer in the amount of Buyer's cost to obtain the Survey in exchange for receipt of the Survey. In the event that Seller fails to timely comply with all conditions, covenants and obligations hereunder, or if any of the representations and warranties of Seller contained herein are untrue either when made or become untrue any time thereafter, or if Seller otherwise breaches this Agreement, such failure or misrepresentation shall be an event of default by Seller (a "**Seller Default**"), then, notwithstanding any other provision of this Agreement to the contrary at Buyer's option (i) the

Earnest Money shall be promptly returned to Buyer, Seller shall reimburse Buyer in the amount of Buyer's cost to obtain the Survey (which shall be delivered to Seller upon Buyer's receipt of such reimbursement) and this Agreement shall be terminated, or (ii) Buyer may seek specific performance, and in either of such events, Buyer shall have no further right or remedy at law or in equity against Seller.

18. **ATTORNEY'S FEES:** Either Party to this Agreement who is the prevailing Party in any legal or equitable proceeding against any other Party brought for a breach of this Agreement shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing Party.

19. **ESCROW:** The Earnest Money shall be deposited with Escrow Agent with the understanding that (a) Escrow Agent is not a Party to this Agreement and does not assume or have any liability for performance or non-performance of either Party and (b) before the Escrow Agent has any obligation to disburse the Earnest Money in the event of dispute, it has the right to require from all signatories a written release of liability of the Escrow Agent, termination of the Agreement and authorization to disburse the Earnest Money. At Closing, the Earnest Money shall be applied by the Title Company to the Purchase Price.

20. **DUTIES OF BUYER AND SELLER AT CLOSING:**

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

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

- (9) All other necessary documents reasonably requested by Buyer to close this transaction.

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

- (1) Pay the Purchase Price in the form of readily available funds; provided that Title Company shall not release the net proceeds of the Purchase Price to Seller until the latter of (a) the completion of the Closing, or (b) the date on which Seller delivers possession of the Properties to Buyer, upon written confirmation from Seller and Buyer to Title Company;
- (2) Execute a Closing Statement;
- (3) Provide evidence of its capacity and authority for the closing of this transaction, if required by the Title Company;
- (4) Execute a counterpart of the Indiana Disclosure of Sales Information form; and
- (5) Execute all other necessary documents reasonably requested by Seller to close this transaction.

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

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

- A. Prior title insurance policies, title commitments, title exception documents, vesting deeds, plats, and surveys.
- B. All environmental documents, including but not limited to prior environmental reports.
- C. All building plans, construction contracts, permits, and zoning approvals.
- D. Evidence of the location and capacity of all utilities, including but not limited to water, sanitary, electric, gas, telephone, and cable.
- E. Unrecorded leases (including farm leases), easements, and encumbrances, if any.

- F. Evidence of any third-party mineral interests.
- G. Any other documents or reports relating to the Properties and any other documents, materials, or information requested by Buyer.

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

- A. Seller has the full capacity, right, power and authority to execute, deliver, and perform this Agreement and all documents to be executed by Seller pursuant hereto, and all required actions and approvals have been taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto. This Agreement and all documents to be executed pursuant hereto by Seller are and shall be valid, binding upon and enforceable against Seller in accordance with their respective terms.
- B. No action, suit, claim, arbitration, litigation, or other proceedings is pending or threatened against Seller or related to the Properties or any part thereof.
- C. Seller is not involved in any proceedings by or against Seller in any court under the Bankruptcy Code, or any other insolvency or debtor's relief law, whether federal or state, or for the appointment of a trustee, receiver, liquidator, assignee, or other similar official of Seller or a substantial part of Seller's property.
- D. Seller has not received any notification from any governmental agency, authority, or any utility, of any pending or threatened claims, condemnations, planned public improvements, annexation, special assessments, rezoning, or other adverse claims affecting the Properties or any part thereof or any proposed increases in the cost of utility services.
- E. Seller will not create, permit, or suffer any lien or other encumbrance to attach to or affect the Properties, other than the lien of non-delinquent real estate taxes. On the Closing Date, there will be no liens and/or unpaid claims of contractors, materialmen, or laborers which could give rise to a lien against the Properties, and there will be no mortgages or security interests against the Properties.
- F. Seller has good and marketable fee simple title to the Properties, free and clear of all liens, security interests, encumbrances, recorded and unrecorded leases, service contracts, and restrictions of every kind and description, except the Permitted Exceptions and liens and encumbrances to be released on the Closing Date. There is no offer, option to purchase, right of first offer, or right of first refusal for the sale or lease of all or any portion of the Properties.
- G. There are no persons or entities in possession or occupancy of the Properties or any part thereof other than have been identified in writing to Buyer by Seller concurrently with the execution of this Agreement; nor are there any other persons or entities who have possessory or other rights with respect to or interests in the Properties or any part thereof. From the date of execution of this Agreement through

the date of Closing, Seller will not enter into any lease of any portion of the Properties.

- H. To Seller's knowledge, no Hazardous Materials have been used, generated, manufactured, stored, treated, released, or disposed of at, in, on, or under the Properties.
- I. Except as may be disclosed in the environmental reports previously delivered by Seller to Buyer, to Seller's knowledge, the Properties complies with Environmental Law and Seller has received no other notices to the contrary.
- J. To Seller's knowledge, there are no soft soils, underground storage tanks, or subsurface materials which would increase the cost to develop the Properties.
- K. From the date of execution of this Agreement through the date of Closing, Seller shall continue to maintain the Properties in their present condition, and shall not, subject to any activities conducted on the Properties by Buyer pursuant to the Access Agreement, alter any portion of the Properties in any material respect or construct any material improvements to the Properties.
- L. From the date of execution of this Agreement through the date of Closing, Seller will not enter into any oral or written agreements affecting the Properties which might become binding on Buyer or the Properties at or after Closing.
- M. To Seller's knowledge, the Properties comply with all applicable laws and ordinances, and the present maintenance, operation and use of the Properties do not violate any environmental, zoning, subdivision, building or similar law, ordinance, code, regulation or governmental permit affecting the Properties, and Seller shall provide to Buyer promptly following Seller's receipt, written notice of alleged material violations of applicable law with respect to the Properties received by Seller from and after the Effective Date.
- N. Seller has no employees or employment agreements or collective bargaining agreements at the Properties for which Buyer will be responsible after closing. Seller is not a "foreign person" as defined by the Internal Revenue Code (the "Code"), Section 1445.
- O. Seller is not in violation of any legal requirements, now or hereafter in effect, relating to money laundering, anti-terrorism, trade embargoes and economic sanctions, including, without limitation, Executive Order 13224 (as defined below) and the Patriot Act (as defined below). Seller (i) is not (a) a Blocked Person (as defined below) or (b) owned, in whole or in part, directly or indirectly, by any Blocked Person; and (ii) does not (a) conduct any business or engage in any transaction or dealing with a Blocked Person or (b) deal in, or otherwise engage in, any transaction or dealing relating to any property, or interests in property, blocked pursuant to Executive Order 13224. As used herein, (i) "Blocked Person" is defined as any individuals or entities which (a) are owned or controlled by, or acting on behalf of, the governments of countries currently listed under section 6(j) of the Export Administration Act as supporting international terrorism, or (b) are owned or controlled by, are acting on behalf of, or are associated with, international terrorism,

as indicated by their listing on the Treasury Department's Specially Designated Nationals and Blocked Persons, as updated from time to time; (ii) "Executive Order 13224" is defined as Executive Order Number 13224, "Blocking Property Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism," 66 Fed. Reg. 49079 (Sept. 23, 2001); and (iii) "Patriot Act" is defined as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272

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

Except as provided below, the representations and warranties contained in this Section 23 will survive for twelve (12) months after the Closing Date, and will thereafter terminate, together with any claims under or remedies associated with Section 17, above. The representations and warranties contained in these Subsections 23 will survive indefinitely.

24. Intentionally omitted.

25. MISCELLANEOUS:

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

Seller: Adam Gerig
3474 Stellhorn Rd
Fort Wayne, IN 46815
adam.gerig@century21.com

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

With a copy to:

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

- B. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and the jurisdiction and venue with respect to any disputes arising hereunder will be proper only in the city or county in which the Properties is located.
- C. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, and assigns. Buyer may, without the consent of Seller, assign its rights under this Agreement to a third party at any time on or before the Closing Date.
- D. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- E. This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting the transaction and cannot be changed except by their written consent.
- F. Time is of the essence of this Agreement.
- G. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa unless the context requires otherwise.
- H. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement. The Parties agree that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.
- I. The provisions of this Agreement and of the documents to be executed and delivered at the Closing are and will be for the benefit of Seller and Buyer (and Buyer's assigns, if any) only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at the Closing.
- J. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.
- K. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Agreement falls on a Saturday,

Sunday or federal legal holiday, then such date will be extended to the next following date which is not a Saturday, Sunday or federal legal holiday.

- L. Seller shall have the option to retain possession of the Properties for a period of thirty (30) days after Closing by providing written notice of his intent to do so not less than ten (10) days prior to Closing. In the event Seller exercises his option to retain possession of the Properties as provided herein, Seller agrees throughout Seller's possession after Closing: (i) to repair and maintain the Properties 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 Properties; (iii) to maintain property and liability insurance upon the Properties 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 Properties; (v) to pay all other costs and expenses accruing or coming due during the term of Seller's possession after the date of Closing; and (vi) to bear the entire risk of loss of the Properties until the delivery of possession of the Properties to Buyer. Seller agrees to deliver possession of the Properties to Buyer no later than thirty (30) days after the date of Closing. In the event Seller does not deliver possession of the Properties to Buyer on or prior to the expiration of the thirty (30) day period following Closing, Buyer may elect to (a) terminate this Agreement upon written notice to Seller and Escrow Agent, in which event the Escrow Agent shall forthwith return the Earnest Money to Buyer, or (b) agree in writing with Seller to an additional extension of the retention of possession of the Properties for such period and with such reduction in the Purchase Price as shall be acceptable to Buyer, provided that in any event the covenants made by Seller in this Section 25.L shall remain in full force and effect during such additional extension.
26. **PROFESSIONAL FEES:** Each Party shall warrant to the other that no real estate brokers or other intermediaries are involved in connection with the transaction.
27. **CONFIDENTIALITY:** Buyer and Seller shall maintain the confidentiality of all documents supplied to or obtained by Buyer in connection with its due diligence of the Properties, and any related documents, subject to disclosure on a "need to know" basis to attorneys, clients, potential lenders, actual lenders, equity investors, accountants, architects, appraisers, engineers, contractors, consultants, tenants, and potential tenants, as required by applicable law or judicial process, or as required to be provided to governmental and quasi-governmental bodies, agencies, and employees in connection with any entitlement or other processes in which Buyer engages with respect to its inspection of the Properties. The Parties expressly confirm that this confidentiality provision is an essential and material term of this Agreement that is intended to be enforceable by any remedies available at law or equity, including injunctive relief.
28. **EXCLUSIVE RIGHTS:** Seller and Seller's agents shall refrain from all further marketing efforts for the Properties and shall not accept or entertain offers, negotiate, solicit interest, or otherwise enter into discussions involving the sale, recapitalization, restructuring, or disposition of all or any part of the Properties, until the termination of this Agreement.
29. **JUDICIAL INTERPRETATION:** Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not construe this Agreement against one Party more strictly by reason of the rule of interpretation that a document is to be construed more strictly against the Party that prepared the same, it being agreed that the agents of each Party have participated in the preparation of this Agreement and that each Party thereto

consulted with independent legal counsel of its own selection or had the opportunity to consult with such legal counsel prior to the execution of this Agreement.

30. **WAIVER OF CONSEQUENTIAL DAMAGES.** Notwithstanding any provision in this Agreement to the contrary, neither Party will be liable to the other Party for consequential damages, such as lost profits or interruption of the other Party's business, except that this sentence will not apply to Seller's breach of its confidentiality obligations under this Agreement.
31. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER AND BUYER WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN OR AMONG SELLER AND BUYER ARISING OUT OF THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.
32. **ANTI-CORRUPTION.** Seller will not knowingly permit anyone to pay bribes to anyone for any reason, whether in dealings with governments or the private sector, or otherwise violate any applicable anti-corruption laws in performing under this Agreement. Seller will maintain true, accurate and complete books and records concerning any payments made to another party by Seller under this Agreement, including on behalf of Buyer. Buyer and its designated representative may inspect Seller's books and records to verify such payments and for the compliance with this **Section 32.**

[Signature page follows]

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

SELLER:

Adam Gerig

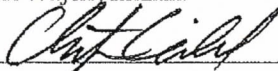
By: 

Printed: Adam Gerig

Title: Seller

BUYER:

City of Fort Wayne, Indiana

By: 

Printed: Christopher Carmichael

Title: Property Manager

Exhibit A

810 Lillian Ave, Fort Wayne, IN 46808

Legal Description: The East 40 feet of Lot Numbered 475 Pfeiffer Place Second Addition to the City of Fort Wayne, according to the Recorded Plat thereof, as recorded in the Office of the Recorder of Allen County, Indiana.

Excepting:

The North 100.8 feet of the East 40 feet of Lot Number 475 in Pfeiffer Place Second Addition to the City of Fort Wayne, according to the plat thereof recorded in Plat Record 5, page 80, in the Office of the Recorder of Allen County, Indiana.

PIN: 02-07-35-151-037.000-074



Exhibit B

816 Lillian Ave, Fort Wayne, IN 46808

Legal Description: The West 40 feet of Lot Number 475 in Pfeiffer Place Second Addition to the City of Fort Wayne, according to the Recorded Plat thereof, in the Office of the Recorder of Allen County, Indiana.

PIN: 02-07-35-151-036.000-074



Exhibit C

Form of Access Agreement

Exhibit C consists of pages 20 through 25 of full document.

ACCESS AND INDEMNIFICATION AGREEMENT

This Access and Indemnification Agreement (this "Agreement") is entered into as of this 17th day of October, 2024 by and between ADAM GERIG ("Owner") and the CITY OF FORT WAYNE, INDIANA ("City").

RECITALS

- A. WHEREAS, Owner is the owner in fee of the real properties described in Exhibit A and Exhibit B attached hereto and incorporated herein by reference (collectively the "Properties").
- B. WHEREAS, Owner has granted City permission to enter upon the Properties, on a temporary basis, for the purpose of conducting certain Examinations of the Properties as defined in and pursuant to that certain Real Estate Purchase Agreement entered into by Owner and City on October 17th, 2024 (the "Purchase Agreement"), a copy of which is attached hereto and incorporated herein by reference as Exhibit C.
- C. WHEREAS, the Parties wish to enter into this Agreement whereby the Owner will allow City to enter upon the Properties, on a temporary basis, for the purpose of conducting the Examinations as more particularly described in the Purchase Agreement.

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

AGREEMENT

1. Right of Access. The Owner hereby grants to City and its agents, employees, contractors and subcontractors the temporary right to enter upon the Properties for the purpose of conducting the Examinations pursuant to the Purchase Agreement (the "Right of Access").
2. Term. The term of this Agreement, together with any extensions thereof, is set forth in Section 9 of the Purchase Agreement (the "Term").
3. Indemnification. City hereby agrees to indemnify, defend, and hold harmless Owner, to the extent permitted by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, injuries or death of persons, which are caused solely and directly by City's conducting of the Examinations on the Properties during the Term, unless such actions, claims, suits, penalties, obligations, liabilities, damages to property, or injuries or death to persons results from the negligent or intentional act or omission of Owner or a third party. City will at all times maintain commercially reasonable insurance coverage to cover its potential indemnity obligations under this Agreement. Owner and City agree that City shall not be liable for, and is hereby released from, any and all claims, damages, losses, judgments, suits, actions

and liabilities, whether arising during, prior to or subsequent to the date of this Agreement, related to the presence of Hazardous Substances (as defined below) or endangerments in, on, or under the Properties, except to the extent solely and directly caused by the affirmative acts or omissions of City or its representatives, contractors, subcontractors or agents. For purposes of this Section, the following terms have the following meanings: (a) "Hazardous Substances" mean and include (a) any friable asbestos, or asbestos containing material, PCBs, dioxins and urea formaldehyde foam insulation; (b) any petroleum products; (c) any waste, substance, material, pollutant or contaminant defined as hazardous or toxic in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, as the same may heretofore or hereafter be amended; and (d) any waste, substance, material, pollutant or contaminant (i) defined as hazardous or toxic in (or for purposes of) any other Environmental Laws (as defined below) now or at any time hereafter in effect or (ii) the presence, disposal, release or threatened release of which on, onto or from any premises (including the Properties Area) is governed by any other applicable Environmental Laws. (b) "Environmental Laws" mean all federal, state and local laws, ordinances, rules and regulations now or at any time hereafter in effect which regulate, relate to or impose liability or standards of conduct concerning any Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act.

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

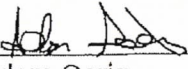
5. Restoration of the Property. Upon the expiration or earlier termination of this Agreement, City shall, at its own cost and expense, restore the Properties to substantially the same condition in which the Properties existed prior to City's entry upon the Properties.

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

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

OWNER:

CITY:

By:  _____
Adam Gerig

By:  _____
Christopher Carmichael
Property Manager

EXHIBIT "A"

810 Lillian Ave. Fort Wayne, IN 46808

Legal Description: The East 40 feet of Lot Numbered 475 Pfeiffer Place Second Addition to the City of Fort Wayne, according to the Recorded Plat thereof, as recorded in the Office of the Recorder of Allen County, Indiana.

Excepting:

The North 100.8 feet of the East 40 feet of Lot Number 475 in Pfeiffer Place Second Addition to the City of Fort Wayne, according to the plat thereof recorded in Plat Record 5, page 80, in the Office of the Recorder of Allen County, Indiana.

PIN: 02-07-35-151-037.000-074



EXHIBIT "B"

816 Lillian Ave. Fort Wayne, IN 46808

Legal Description: The West 40 feet of Lot Number 475 in Pfeiffer Place Second Addition to the City of Fort Wayne, according to the Recorded Plat thereof, in the Office of the Recorder of Allen County, Indiana.

PIN: 02-07-35-151-036.000-074



EXHIBIT "C"

REAL ESTATE PURCHASE AGREEMENT

Exhibit C consists of pages 1 through 19 of full document.

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	Acquisition by City from Adam Gerig of two (2) parcels of real estate located at 810 & 816 Lillian Avenue, Fort Wayne, Wayne Township, Allen County, Indiana
Awarded To	Adam Gerig
Amount	\$261,125.00
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 <i>(State, Federal, Piggyback--Authority)</i>	Acquisition by City from Adam Gerig of two (2) parcels of real estate located at 810 & 816 Lillian Avenue, Fort Wayne, Wayne Township, Allen County, Indiana
Sole Source/Compatibility Justification	N/A

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

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

COUNCIL DIGEST SHEET

COST COMPARISON

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

DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	City acquiring real estate to be held for future Public Works use.

REQUEST FOR PRIOR APPROVAL

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

FUNDING SOURCE

<i>Account Information.</i>	Public Works General Funds



CITY OF FORT WAYNE

SHARON TUCKER, MAYOR

November 19, 2024

City Council Members
City of Fort Wayne

RE: City of Fort Wayne, Indiana, Board of Public Works/Adam Gerig Purchase Agreement 810 & 816 Lillian Avenue

Dear Council Members:

The City has entered into a Purchase Agreement to acquire properties located at 810 & 816 Lillian Ave, Fort Wayne, 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

ENHANCED QUALITY OF LIFE FOR ALL

CITIZENS SQUARE

200 E. Berry St. • Fort Wayne, Indiana • 46802 • cityoffortwayne.org

An Equal Opportunity Employer

BILL NO. R-24-11-30

REPORT OF COMMITTEE ON FINANCE

December 3, 2024

Marty Bender Chair







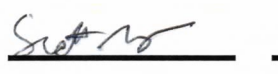
Rohli Booker Co-Chair

All Council Members

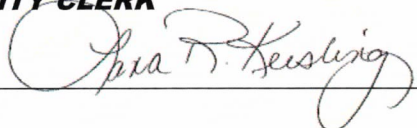
A Resolution approving the purchase of two (2) parcels of certain real estate located at 810 & 816 Lillian Avenue, Fort Wayne, Indiana, for the City of Fort Wayne, from Adam Gerig by and through the Division of Public Works - Resolution #111-11-5-24-2

The Purchase Price for the properties is \$261,125.00

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>			

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

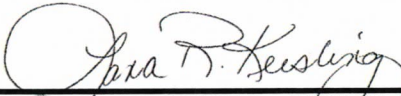
Read the first time in full and on motion by Councilperson Bender.

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 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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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: December 10, 2024

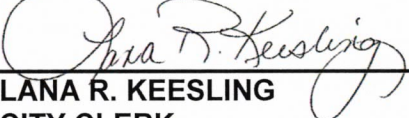


 LANA R. KEESLING, CITY CLERK

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

Resolution No. R-24-11-30 on the 10th day of December, 2024

ATTEST:

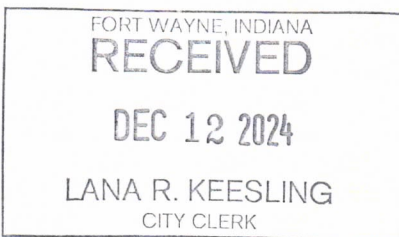


 LANA R. KEESLING
 CITY CLERK



 PRESIDING OFFICER


Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th of December 2024, at the hour of 11:10 o'clock A.M. E.S.T.





 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 12th day of December 2024, at the hour of 8:51 o'clock A.M. E.S.T.



 SHARON TUCKER, MAYOR