BILL NO. R-11-11-25

RESOLUTION NO. __________

A RESOLUTION APPROVING THE PURCHASE OF CERTAIN REAL ESTATE (1118 W. TILL ROAD) FOR THE CITY OF FORT WAYNE, INDIANA.

WHEREAS, the City of Fort Wayne desires to purchase property located at 1118 W. TILL ROAD, specifically described in “Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, the purchase of this property is necessary for the City Utilities flood mitigation plan for the Beckett’s Run Ditch; and

WHEREAS, the purchase price for this property is TWO HUNDRED FIFTY-TWO THOUSAND, FIVE HUNDRED SEVENTY-FIVE AND 00/100 DOLLARS – ($252,575.00); and

WHEREAS, Sec. 37-19 of the City of Fort Wayne Code of Ordinances, requires the Common Council approval of any purchase or conveyance of real estate by the City.

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

SECTION 1. The purchase of property located at 1118 W. Till Road, by the City of Fort Wayne, is hereby approved and agreed to.

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

____
Carol Helton, City Attorney

PROPERTY MANAGEMENT DEPARTMENT
INTER-OFFICE
MEMO

TO: Members of the Common Council

FROM: Daniel A. Brenner
Property Manager

DATE: November 16, 2011

RE: Purchase Agreement – 1118 W. Till Rd.

The City of Fort Wayne has entered into a Purchase Agreement with Mr. James Dalgard to purchase the home and 19.24 acre property located at 1118 W. Till Rd.

The property is located in northern Fort Wayne in the 3rd district, on the north side of Till Road, just west of Coldwater Road. It is being acquired as a part of the City's flood mitigation plan for the Beckett's Run Ditch. City Utilities plans to re-route the Beckett's Run Ditch and construct a flood containment area on this property. This should alleviate flooding on Till Road and of the surrounding properties. Public Works supports this property purchase because they can gain right of way on Till Rd. The Parks and Recreation Department is excited for this property purchase because the property adjoins the Solomon Farm Park, and Parks intends to expand their pathway system onto this property. INDOT is paying City Utilities $750,000 for this project as part of INDOT's St. Rd. 3 widening.

Implications of Not Being Approved: The Beckett's Run Ditch would continue to flood Till Rd. and the surrounding properties creating a public health and safety concern. INDOT would not pay $750,000 to City Utilities.

The agreed purchase price is based on the average of two appraisals obtained for the property. Copies of the valuation pages are attached. The Board of Stormwater Management has approved the Purchase Agreement. A copy of the agreement is attached for your review as well.

City Utilities Engineering, Public Works, and the Parks and Recreation Department recommend approval of this property purchase and respectfully request City Council consideration.

If you have any question on the above, please feel free to contact me at 427-5402.

Attachments

APPRAISAL REPORT

12/08

Code - - -

( ) Value Finding (X) Short Form ( ) Long Form

(X) Partial Acquisition ( ) Total Acquisition

Type of Property Residential Land (residential bldgs. of no value) Des # - - -

Indicate: (Residential, Commercial, Bareland, Farm, Special, Industrial)

Location 1118 West Till Road, Fort Wayne, IN 46825 Parcel Dalgard

Owner James R. Dalgard Phone 260-403-9415 Road Till

Address 1118 West Till Road, Fort Wayne, IN 46825 County Allen

[ ] Tenant [ ] Contract Buyer Not applicable Phone - - -

Address - - -

Land Areas: Before: 19.28 acres After: 8.03 acres Acquisition: 11.25 acres

Temp R/W - - - Perpetual R/W - - - PER - - - Access Rights - - -

CERTIFICATION OF APPRAISER

I certify that, to the best of my knowledge and belief:

That I have made a personal observation of the property that is the subject of this report and that I have made a personal field inspection of the comparable sales relied upon in making said appraisal. The property being appraised and the comparable sales were as represented or referenced within the appraisal.

That the statements of fact contained in the report are true and correct.

That I understand that such appraisal MAY be used in connection with the acquisition of right-of-way for a project utilizing Federal funds.

That such appraisal has been made in conformity with appropriate laws, regulations, policies and procedures applicable to the appraisal of property for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of such items which are noncompensable under appropriate established law.

That this appraisal assignment may have called for less than would otherwise be required by the specific guidelines of the Uniform Standards of Professional Appraisal Practices (USPAP), but is not so limited in scope that it may tend to mislead the users of the report, or the public.

That I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

That my engagement in this assignment was not contingent upon developing or reporting predetermined results.

That neither my employment nor my compensation for completing this assignment is contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

That any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which said property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, was disregarded in determining the compensation for the property.

That the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

That I have no direct or indirect present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved or in any benefit from the acquisition of such property appraised.

That the owner or a designated representative was afforded the opportunity to accompany me on the property inspection.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the Acquiring Agency or officials of the Federal Highway Administration and I will not do so until authorized by said officials or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That I have not given consideration, or included in my appraisal, any allowance for relocation assistance benefits.

That no one provided significant real property appraisal assistance to the person signing this report with the exception of those signing below.

That my opinion of fair market value for the property to be acquired and residue damage, if any, as of the 29th day of July, 2011, which is the effective date of this appraisal, is $ 235,000* based upon my independent appraisal and the exercise of my professional judgement.

SUMMARY

BEFORE VALUE		$ 250,650
AFTER VALUE		$ 15,650
Land Taken	$ 146,250	
Land Improvements	$ 0	
Improvements	$ 0	
Cost-To-Cure	$ 0	
Damages to Residue	$ 88,750	
Temporary R/W	$ 0	
TOTAL DUE OWNER		$ 235,000

*For purchase of 11.25 acres; if 19.28 acres purchased, award is $250,650.

PRIMARY APPRAISER

Signature [signature]

Name Typed Larry D. Misner, MAI

Appraisal Lic. # Indiana Certified General #CG69201580

Broker Lic. # Indiana Real Estate Broker #IB51159769

Date 8/24/11

ASSISTED BY

Signature Rochelle L. Burger

Name Typed Rochelle L. Burger

Appraisal Lic. # Indiana Certified General #CG49500076

Broker Lic. # Indiana Real Estate Broker #IB59000335

Date 8/24/11

Signature

Name Typed

Appraisal License #

Broker #

Date

APPRAISAL REPORT

03/08

Code N/A

☐ Value Findings ☒ Short Form ☐ Long Form

☒ Partial Acquisition ☐ Total Acquisition

Type of Property: Residential (Single-Family)
Indicate:(Residential, Commercial, Bareland, Farm, Special, Industrial)

Des# N/A

Location: 1118 W. Till Road, Fort Wayne, Indiana 46825 — Parcel: Dalgard

Owner: James R. Dalgard — Phone: 260-403-9415 — Road: Not Applicable

Address: 1118 W. Till Road, Fort Wayne, Indiana 46825 — County: Allen

☐ Tenant ☐ Contract Buyer: Not Applicable — Phone: Not Applicable

Address: Not Applicable

Land Areas: Before: 19.28 Acres — After: 8.03 Acres — Acquisition: 11.25 Acres in Fee Simple

Temp. R/W: None — Perpetual R/W: None — PER: None — Access Rights: None

CERTIFICATION OF APPRAISER

I certify that, to the best of my knowledge and belief:

That I have made a personal observation of the property that is the subject of this report and that I have made a personal field inspection of the comparable sales relied upon in making said appraisal. The property being appraised and the comparable sales were as represented or referenced within the appraisal.

That the statements of fact contained in the report are true and correct.

That I understand that such appraisal MAY be used in connection with the acquisition of right-of-way for a project utilizing Federal funds.

That such appraisal has been made in conformity with appropriate laws, regulations, policies and procedures applicable to the appraisal of property for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of such items which are noncompensable under appropriate established law.

That this appraisal assignment may have called for less than would otherwise be required by the specific guidelines of the Uniform Standards of Professional Appraisal Practices (USPAP), but is not so limited in scope that it may tend to mislead the users of the report, or the public.

That I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

That my engagement in this assignment was not contingent upon developing or reporting predetermined results.

That neither my employment nor my compensation for completing this assignment is contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

That any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which said property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, was disregarded in determining the compensation for the property.

That the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

That I have no direct or indirect present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved; or in any benefit from the acquisition of such property appraised.

That the owner or a designated representative was afforded the opportunity to accompany me on the property inspection.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the Acquiring Agency or officials of the Federal Highway Administration and I will not do so until authorized by said officials or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That I have not given consideration, or included in my appraisal, any allowance for relocation assistance benefits.

That no one provided significant real property appraisal assistance to the person signing this report with the exception of those signing below.

That my opinion of fair market value for the property to be acquired and residue damages, if any, as of the 23rd day of August, 2011, which is the effective date of this appraisal is $232,500.00 based upon my independent appraisal and the exercise of my professional judgment.

SUMMARY

BEFORE VALUE		$ 254,500
AFTER VALUE		$ 22,000
Land Taken	$ 148,500	
Land Improvements	$ 0	
Improvements	$ 0	
Cost-to-Cure	$ 0	
Damages to Residue	$ 84,000	
Temporary R/W	$ 0	
TOTAL DUE OWNER		$ 232,500

PRIMARY APPRAISER

Signature: Rita Ann Gabriel
Named Typed: Rita Ann Gabriel, MAI
Appraisal License # CG69100630
Broker # IB51280017
Date: August 24, 2011

ASSISTED BY

Signature:
Named Typed:
Appraisal License #
Broker #
Date:

Signature:
Name Typed:
Appraisal License #
Broker #
Date:

Listing Broker (Co.) N/A (________ office code) By ________________________ (________ individual code)

Selling Broker (Co.) N/A (________ office code) By ________________________ (________ individual code)

PURCHASE AGREEMENT
(IMPROVED PROPERTY)

Date: 10/13/11

1. **BUYER:** City of Fort Wayne ("Buyer") agrees to buy the following property from the owner ("Seller") for the consideration and subject to the following terms, provisions, and conditions:

2. **PROPERTY:** The property ("Property") is known as 1118 W. Till Road in ~~Forest~~ WASHINGTON Township, Allen County, Indiana, 46825 (zip code) legally described as: Lot 8 & E. 138.39 feet Lot 7 Rousseau's O.L. S1/2 NE1/4 S3, T31N, R12E containing 19.24 acres together with any existing permanent improvements and fixtures attached **(unless leased or excluded)**, including, but not limited to, electrical and/or gas fixtures, home heating fuel, heating and central air-conditioning equipment and all attachments thereto, built-in kitchen equipment, sump pumps, water softener, water purifier, gas grills, fireplace inserts, gas logs and grates, central vacuum equipment, window shades/blinds, curtain rods, drapery poles and fixtures, ceiling fans and light fixtures, towel racks and bars, storm doors, windows, awnings, TV antennas, satellite dishes and controls, storage barns, all landscaping, mailbox, garage door opener with controls AND THE FOLLOWING: ________________________

EXCLUDES THE FOLLOWING: ________________________

The terms of this Agreement will determine what items are included/excluded. All items sold shall be fully paid for by Seller at time of closing the transaction. Buyer should verify total square footage, land, room dimensions or community amenities if material.

3. **PRICE:** Buyer will pay the total purchase price of $ 252,575.00 for the Property. If Buyer obtains an appraisal of the Property, this Agreement is contingent upon the Property appraising at no less than the agreed upon purchase price.

4. **EARNEST MONEY:** Buyer submits $ Ø as earnest money which shall be applied to the purchase price. The listing broker shall deposit earnest money received into its escrow account within two (2) banking days of acceptance of this Agreement and hold it until time of closing the transaction or termination of this Agreement. **If Buyer fails for any reason to submit earnest money, Seller may terminate this Agreement.** Earnest money shall be returned promptly in the event this offer is not accepted. If this offer is accepted and Buyer fails or refuses to close the transaction, without legal cause, the earnest money shall be retained by Seller for damages the Seller has or will incur, and Seller retains all rights to seek other legal and equitable remedies. The Broker holding any earnest money is absolved from any responsibility to make payment to the Seller or Buyer unless the parties enter into a Mutual Release or a Court issues an Order for payment, except as permitted in 876 IAC 1-1-23 (release of earnest money). Upon notification that Buyer or Seller intends not to perform, Broker holding the earnest money may release the earnest money as provided in this Agreement. If no provision is made in this Agreement, Broker may send to Buyer and Seller notice of the disbursement by certified mail. If neither Buyer nor Seller enters into a mutual release or initiates litigation within sixty (60) days of the mailing date of the certified letter, Broker may release the earnest money to the party identified in the certified letter. Buyer and Seller agree to hold the Broker harmless from any liability, including attorney's fees and costs, for good faith disbursement of earnest money in accordance with this Agreement and licensing regulations.

5. **METHOD OF PAYMENT: (Check appropriate paragraph letter)**

☒ **A. CASH:** The entire purchase price shall be paid in cash and no financing is required.

☐ **B. NEW MORTGAGE:** Completion of this transaction shall be contingent upon the Buyer's ability to obtain a

☐ **Conventional** ☐ **Insured Conventional** ☐ **FHA** ☐ **VA** ☐ **Other:** ________________ first mortgage loan for ________ % of purchase price, payable in not less than ________ years, with an original rate of interest not to exceed ________ % per annum and not to exceed ________ points. Buyer shall pay all costs of obtaining financing, except ________________________

Any inspections and charges which are required to be made and charged to Buyer or Seller by the lender, FHA, VA, or mortgage insurer, shall be made and charged in accordance with their prevailing rules or regulations and shall supersede any provisions of this Agreement.

☐ **C. ASSUMPTION: (Attach Financing Addendum)**
☐ **D. CONDITIONAL SALES CONTRACT: (Attach Financing Addendum)**
☐ **E. OTHER METHOD OF PAYMENT: (Attach Financing Addendum)**

6. TIME FOR OBTAINING FINANCING: Buyer agrees to make written application for any financing necessary to complete this transaction or for approval to assume the unpaid balance of the existing mortgage within NA days after the acceptance of this Agreement and to make a diligent effort to meet the lender's requirements and to obtain financing in cooperation with the Broker and Seller. No more than 0 days after acceptance of the Agreement shall be allowed for obtaining favorable written commitment(s) or mortgage assumption approval. If a commitment or approval is not obtained within the time specified above, this Agreement shall terminate unless an extension of time for this purpose is mutually agreed to in writing.

7. CLOSING: The closing of the sale (the "Closing Date") shall be on or before March 1, 2012, or within ______ days after ______, whichever is later or this Agreement shall terminate unless an extension of time is mutually agreed to in writing. The closing fee charged by the title insurance company shall be paid by ☒ **Buyer** ☐ **Seller** ☐ **Shared equally** ☐ **Included in allowance, if provided.**

Notwithstanding terms to the contrary, the Parties agree that as a condition to closing, all funds delivered to the closing agent's escrow account be in such form that the closing agent shall be able to disburse in compliance with I.C. 27-07-3.7 et. seq.. Therefore, all funds from a single source of $10,000 or more shall be wired unconditionally to the closing agent's escrow account and all funds under $10,000 from a single source shall be good funds as so defined by statute.

8. POSSESSION:

A. The possession of the Property shall be delivered to Buyer ☐ **at closing** ☒ **within** 60 **days after closing or** ☐ **on or before** ______ **if closed.** For each day Seller is entitled to possession after closing, Seller shall pay to Buyer at closing $ ______ per day. If Seller does not deliver possession by the date required in the first sentence of this paragraph, Seller shall pay Buyer $ ______ per day as **liquidated damages** until possession is delivered to Buyer; and Buyer shall have all other legal and equitable remedies available against the Seller.

B. Maintenance of Property: Seller shall maintain the Property in its present condition until its possession is delivered to Buyer, subject to repairs in response to any inspection. Buyer may inspect the Property prior to closing to determine whether Seller has complied with this paragraph. Seller shall remove all debris and personal property not included in the sale.

C. Casualty Loss: Risk of loss by damage or destruction to the Property prior to the closing shall be borne by Seller. In the event any damage or destruction is not fully repaired prior to closing, Buyer, at Buyer's option, may either **(a) terminate this Agreement or (b) elect to close the transaction,** in which event Seller's right to all real property insurance proceeds resulting from such damage or destruction shall be assigned in writing by Seller to Buyer.

D. Utilities/Municipal Services: Seller shall pay for all municipal services and public utility charges through the day of possession.

9. SURVEY: Buyer shall receive a **(Check one)** ☐ SURVEYOR LOCATION REPORT, which is a survey where corner markers are not set; ☐ BOUNDARY SURVEY, which is a survey where corner markers of the Property are set prior to closing; ☒ WAIVED, no survey unless required by lender; at **(Check one)** ☐ **Buyer's expense** ☐ **Seller's expense** ☐ **Shared equally** ☐ **Included in allowance, if provided.** The survey shall (1) be received prior to closing and certified as of a current date, (2) be reasonably satisfactory to Buyer, (3) show the location of all improvements and easements, and (4) show the flood zone designation of the Property.

10. FLOOD AREA/OTHER: Buyer ☐ **may** ☒ **may not** terminate this Agreement if the Property requires flood insurance. Buyer ☐ **may** ☐ **may not** terminate this Agreement if the Property is subject to building or use limitations by reason of the location, which materially interfere with Buyer's intended use of the Property.

11. HOMEOWNER'S INSURANCE: Completion of this transaction shall be contingent upon the Buyer's ability to obtain a favorable written commitment for homeowner's insurance within 0 days after acceptance of this Agreement.

12. ENVIRONMENTAL CONTAMINANTS ADVISORY/RELEASE: Buyer and Seller acknowledge that Listing Broker, Selling Broker and all salespersons associated with Brokers are NOT experts and have NO special training, knowledge or experience with regard to the evaluation or existence of possible lead-based paint, radon, mold and other biological contaminants ("Environmental Contaminants") which might exist and affect the Property. Environmental Contaminants at harmful levels may cause property damage and serious illness, including but not limited to, allergic and/or respiratory problems, particularly in persons with immune system problems, young children and/or the elderly.

Buyer is STRONGLY ADVISED to obtain inspections (see below) to fully determine the condition of the Property and its environmental status. The ONLY way to determine if Environmental Contaminants are present at the Property at harmful levels is through inspections.

Buyer and Seller agree to consult with appropriate experts and accept all risks for Environmental Contaminants and release and hold harmless all Brokers, their companies and sales associates from any and all liability, including attorney's fees and costs, arising out of or related to any inspection, inspection result, repair, disclosed defect or deficiency affecting the Property, including Environmental Contaminants. This release shall survive the closing.

13. INSPECTIONS: (Check paragraph letter A or B)

Buyer has been made aware that independent inspections disclosing the condition of the property are available and has been afforded the opportunity to require such inspections as a condition of this Agreement.

☒ A. BUYER WAIVES THE RIGHT TO HAVE INDEPENDENT INSPECTIONS

Buyer **WAIVES** inspections and relies upon the condition of the Property based upon Buyer's own examination and releases the Seller, the Listing and Selling Brokers and all salespersons associated with Brokers from any and all liability relating to any defect or deficiency affecting the Property, which release shall survive the closing. Required FHA/VA or lender inspections are not included in this waiver.

☐ **B.** BUYER RESERVES THE RIGHT TO HAVE INDEPENDENT INSPECTIONS (including Lead-Based Paint)

Buyer reserves the right to have independent inspections in addition to any inspection required by FHA, VA, or Buyer's lender(s). All inspections are at Buyer's expense (unless noted otherwise or required by lender) by licensed independent inspectors or qualified independent contractors selected by Buyer within the following time periods. **Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's inspections.**

INSPECTION/RESPONSE PERIOD: Buyer shall order all independent inspections immediately after acceptance of the Purchase Agreement. Buyer shall have ______ days beginning the day following the date of acceptance of the Purchase Agreement to respond to the inspection report(s) in writing to Seller (see "Buyer's Inspection Response").

Inspections may include but are not limited to the condition of the following systems and components: heating, cooling, electrical, plumbing, roof, walls, ceilings, floors, foundation, basement, crawl space, well/septic, water, wood destroying insects and organisms, lead-based paint (note: intact lead-based paint that is in good condition is not necessarily a hazard), radon, mold and other biological contaminants and/or the following:

____

____

____

If the initial inspection report reveals the presence of lead-based paint, radon, mold and other biological contaminants, or any other condition that requires further examination or testing, then Buyer shall have ________ additional days to order, receive and respond in writing to any additional reports.

If the Buyer does not comply with any Inspection/Response Period or make a written objection to any problem revealed in a report within the applicable Inspection/Response Period, the Property shall be deemed to be acceptable. If one party fails to respond or request in writing an extension of time to respond to the other party's Independent Inspection Response, then that inspection response is accepted. A timely request for extension is not an acceptance of the inspection response, whether or not granted. A REASONABLE TIME PERIOD TO RESPOND IS REQUIRED TO PREVENT MISUSE OF THIS ACCEPTANCE PROVISION. Factors considered in determining reasonable time periods include, but are not limited to, availability of responding party to respond, type and expense of repairs requested and need of responding party to obtain additional opinions to formulate a response.

If the Buyer reasonably believes that the Inspection Report reveals a **MAJOR DEFECT** with the Property and the Seller is unable or unwilling to remedy the defect to the Buyer's reasonable satisfaction before closing (or at a time otherwise agreed to by the parties), then Buyer may terminate this Agreement or waive such defect and the transaction shall proceed toward closing. Under Indiana law, **"Defect"** means a condition that would have a significant adverse effect on the value of the Property, that would significantly impair the health or safety of future occupants of the Property, or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises. BUYER AGREES THAT ANY PROPERTY DEFECT PREVIOUSLY DISCLOSED BY SELLER, OR ROUTINE MAINTENANCE AND

MINOR REPAIR ITEMS MENTIONED IN ANY REPORT, SHALL NOT BE A BASIS FOR TERMINATION OF THIS AGREEMENT.

14. LIMITED HOME WARRANTY PROGRAM:
Buyer acknowledges the availability of a LIMITED HOME WARRANTY PROGRAM with a deductible paid by Buyer which ☐ **will** ☐ **will not** be provided at a cost of $ N/A charged to ☐ **Buyer** ☐ **Seller.** Buyer and Seller acknowledge this LIMITED HOME WARRANTY PROGRAM will not cover any pre-existing defects in the Property nor replace the need for an independent home inspection. Broker may receive a fee from the home warranty provider and/or a member benefit.

15. DISCLOSURES: (Check one)
1. Buyer ☐ **has** ☐ **has not** ☒ **not applicable** received and executed SELLER'S RESIDENTIAL REAL ESTATE SALES DISCLOSURE.
2. Buyer ☐ **has** ☐ **has not** ☒ **not applicable** received and executed a LEAD-BASED PAINT CERTIFICATION AND ACKNOWLEDGMENT.

16. TITLE APPROVAL: Prior to closing, Buyer shall be furnished with ☒ **a title insurance commitment for the most current and comprehensive ALTA Owner's Title Insurance Policy available** in the amount of the purchase price or ☐ **an abstract of title continued to date,** showing marketable title to Property in Seller's name. Seller must convey title free and clear of any encumbrances and title defects, with the exception of any mortgage assumed by Buyer and any restrictions or easements of record not materially interfering with Buyer's intended use of the Property. A title company, at Buyer's request, can provide information about availability of various additional title insurance coverages and endorsements and the associated costs.

Owner's Policy to be paid by ☒ **Buyer** ☐ **Seller** ☐ **Shared equally** ☐ **Included in allowance, if provided.**

Lender's Policy, if applicable, to be paid by ☐ **Buyer** ☐ **Seller** ☐ **Shared equally** ☐ **Included in allowance, if provided.** ☐ **Other** ____.

The parties agree that ☐ **Seller** ☐ **Buyer** will select a title insurance company to issue a title insurance policy and will order the commitment ☐ **immediately or** ☐ **other:** ____.

Pursuant to Federal and State law, Seller cannot make Seller's selection of a title insurance provider a condition of this Agreement.

Seller agrees to pay the cost of obtaining all other documents necessary to perfect title (including the cost of the deed and vendor's affidavit), so that marketable title can be conveyed.

17. TAXES: (Check paragraph A, B or C)
☐ **A.** Buyer will assume and pay all taxes on the Property beginning with the taxes due and payable on ____________________, ______, and all taxes due thereafter. At or before closing, Seller shall pay all taxes for the Property payable before that date.

☒ **B.** All taxes that have accrued for any **prior calendar year** that remain unpaid shall be paid by Seller either to the County Treasurer and/or the Buyer in the form of a credit at closing. All taxes that have accrued for the **current calendar year** shall be prorated on a calendar-year basis as of the day immediately prior to the Closing Date.

For purposes of paragraph A and B: For the purpose of determining the credit amount for accrued but unpaid taxes, taxes shall be assumed to be the same as the most recent year when taxes were billed based upon *certified* tax rates. This shall be a final settlement.

☐ **C. FOR RECENT CONSTRUCTION OR OTHER TAX SITUATIONS.** Seller will give a tax credit of $ ____________________ to Buyer at closing. This shall be a final settlement.

WARNING: The succeeding year tax bill for recently constructed homes or following reassessment periods may greatly exceed the last tax bill available to the closing agent.

Buyer acknowledges Seller's tax exemptions and/or credits may not be reflected on future tax bills.

Buyer may apply for current-year exemptions/credits at or after closing.

18. PRORATIONS AND SPECIAL ASSESSMENTS: Insurance, if assigned to Buyer, interest on any debt assumed or taken subject to, any rents, all other income and ordinary operating expenses of the Property, including but not limited to, public utility charges, shall be prorated as of the day immediately prior to the Closing Date. Seller shall pay any special assessments applicable to the Property for municipal improvements previously made to benefit the Property. Seller warrants that Seller has no knowledge of any planned improvements which may result in assessments and that no governmental or private agency has served notice requiring repairs, alterations or corrections of any existing conditions. Public or municipal improvements which are not completed as of the date above but which will result in a lien or charge shall be paid by Buyer. Buyer will assume and pay all special assessments for municipal improvements completed after the date of this Agreement.

19. TIME: Time is of the essence. Time periods specified in this Agreement and any subsequent Addenda to the Purchase Agreement are calendar days and shall expire at 11:59 PM of the date stated unless the parties agree in writing to a different date and/or time.

Note: Seller and Buyer have the right to withdraw any offer/counter offer prior to written acceptance and delivery of such offer/counter offer.

20. HOMEOWNERS ASSOCIATION/CONDOMINIUM ASSOCIATION: Documents for a **mandatory** membership association shall be delivered by the Seller to Buyer within __Ø__ days after acceptance of this Agreement. If the Buyer does not make a written response to the documents within __Ø__ days after receipt, the documents shall be deemed acceptable. In the event the Buyer does not accept the provisions in the documents and such provisions cannot be waived, this Agreement may be terminated by the Buyer and the earnest money deposit shall be refunded to Buyer promptly. Any approval of sale required by the Association shall be obtained by the Seller, in writing, within __Ø__ days after Buyer's approval of the documents.
Buyer acknowledges that in every neighborhood there are conditions which others may find objectionable. Buyer shall therefore be responsible to become fully acquainted with neighborhood and other off-site conditions that could affect the Property.

21. ATTORNEY'S FEES: Any party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party brought under or with relation to the Agreement or transaction shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.

22. MISCELLANEOUS:

A. Unless otherwise provided, any prorations for rent, taxes, insurance, damage deposits, association dues/assessments, or any other items shall be computed as of the day immediately prior to the Closing Date.

B. Underground mining has occurred in Indiana, and Buyers are advised of the availability of subsidence insurance.

C. The Indiana Sheriff's Sex Offender Registry (www.indianasheriffs.org) exists to inform the public about the identity, location and appearance of sex offenders residing within Indiana. Broker is not responsible for providing or verifying this information.

D. Conveyance of this Property shall be by general Warranty Deed, or by ______________________________, subject to taxes, easements, restrictive covenants and encumbrances of record, unless otherwise agreed.

E. Seller represents and warrants that Seller is not a "foreign person" (individual entity) and, therefore, is not subject to the Foreign Investment in Real Property Tax Act.

F. Any notice required or permitted to be delivered shall be deemed received when personally delivered, transmitted electronically or digitally or sent by express courier or United States mail, postage prepaid, certified and return receipt requested, addressed to Seller or Buyer or the designated agent of either party.

G. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and is binding upon the parties' respective heirs, executors, administrators, legal representatives, successors, and assigns.

H. In case any provision contained in this Agreement is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

I. 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.

J. All rights, duties and obligations of the parties shall survive the passing of title to, or an interest in, the Property.

K. Broker(s) may refer Buyer or Seller to other professionals, service providers or product vendors, including lenders, loan brokers, title insurers, escrow companies, inspectors, pest control companies, contractors and home warranty companies. Broker(s) does not guarantee the performance of any service provider. Buyer and Seller are free to select providers other than those referred or recommended to them by Broker(s).

L. By signing below, the parties to this transaction acknowledge receipt of a copy of this Agreement and give their permission to a multiple listing service, Internet or other advertising media, if any, to publish information regarding this transaction.

M. Any amounts payable by one party to the other, or by one party on behalf of the other party, shall not be owed until this transaction is closed.

N. Buyer and Seller consent to receive communications from Broker(s) via telephone, U.S. mail, email and facsimile at the numbers/addresses provided to Broker(s) unless Buyer and Seller notify Broker(s) in writing to the contrary.

O. Buyer discloses to Seller that Buyer holds Indiana Real Estate License # ______________________.

P. Where the word "Broker" appears, it shall mean "Licensee" as provided in I.C.25-34.1-10-6.8.

23. **FURTHER CONDITIONS (List and attach any addenda):** This purchase is subject to the Buyer having up to 60 days after acceptance of this offer to obtain the approval of the Fort Wayne Board of Stormwater Management the Common Council of the City of Fort Wayne; Buyer shall pay for all closing costs, including deed preparation, recording fees. Purchase price is the average of two appraisals obtained by the City

24. **CONSULT YOUR ADVISORS:** Buyer and Seller acknowledge they have been advised that, prior to signing this document, they may seek the advice of an attorney for the legal or tax consequences of this document and the transaction to which it relates. In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, environmental engineer, or other person, with experience in evaluating the condition of the Property.

25. **ACKNOWLEDGEMENTS:** Buyer and Seller acknowledge that each has received agency office policy disclosures, has had agency explained, and now confirms all agency relationships. Buyer and Seller further acknowledge that they understand and accept agency relationships involved in this transaction. By signature below, the parties verify that they understand and approve this Purchase Agreement and acknowledge receipt of a signed copy.

26. **EXPIRATION OF OFFER:** Unless accepted by Seller and delivered to Buyer by ______________ ☐ A.M. ☐ P.M. ☐ Noon, the ________ day of ______________________, this Purchase Agreement shall be null and void and all parties shall be relieved of any and all liability or obligations.

This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The parties agree that this Agreement may be transmitted between them electronically or digitally. The parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on the parties. The original document shall be promptly delivered, if requested.

City of Fort Wayne

Daniel A. Brenner 10/13/11

BUYER'S SIGNATURE DATE BUYER'S SIGNATURE DATE

Daniel A. Brenner

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27. SELLER'S RESPONSE: (Check appropriate paragraph letter):

This _______ day of ____________________, at _________ ☐ A.M. ☐ P.M. ☐ Noon

☐ A. The above offer is Accepted.

☐ B. The above offer is Rejected.

☐ C. The above offer is Countered. See Counter Offer. Seller should sign both the Purchase Agreement and the Counter Offer.

James R Dalgard 10/14/2011

SELLER'S SIGNATURE DATE SELLER'S SIGNATURE DATE

James R Dalgard

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REALTOR®

EQUAL HOUSING OPPORTUNITY

1118 W. Till Rd

(Property Address)