

BILL NO. S-13-07-09

SPECIAL ORDINANCE NO. S-_____

**AN ORDINANCE APPROVING THE
PURCHASE OF A CERTAIN PROPERTY
LOCATED AT 401 WEST SUPERIOR
STREET FOR THE CITY OF FORT
WAYNE, INDIANA.**

WHEREAS, the City wishes to purchase certain property located at 401 West Superior Street, Fort Wayne, Indiana, (the "Real Estate"), specifically described in the legal description Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, the purchase price for the Real Estate is ONE HUNDRED SEVENTY THOUSAND, FOUR HUNDRED AND NO/100 DOLLARS (\$170,400.00); and

WHEREAS, Fort Wayne City Code Sec. 37-19 mandates that the Common Council of the City of Fort Wayne approve any purchases of real property made by the City.

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

SECTION 1. The purchase of Real Estate located at 401 West Superior Street, described in the attached Exhibit "A", by the City of Fort Wayne, Indiana, is hereby approved and agreed to.

SECTION 2. This Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor of the City of Fort Wayne, Indiana.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Verne V. Mitchell & Associates, Inc.

Real Estate Appraisal Services

Verne V. Mitchell, III, MAI

April 15, 2013

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

RE: Appraisal of: 401 West Superior Street
Fort Wayne, IN 46802

Owner: Luis Hernandez

Dear Mr. Brenner:

Responding to your request, we have appraised the above referenced property which is located at the southeast corner of the intersection of West Superior Street and Ewing Street on the northwest side of the central business district 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. Uniform Standards of Professional Appraisal Practice (USPAP) have been applied in preparing this summary appraisal report. The scope of the valuation analysis is contained in the report. This appraisal is subject to Assumptions and Limiting Conditions governing this appraisal and this letter of transmittal is considered part of the appraisal report.

The highest and best use of the property is for a sales lot type usage. The effective date of value is the viewing date which was April 9, 2013. The analysis in this report was completed by April 11, 2013.

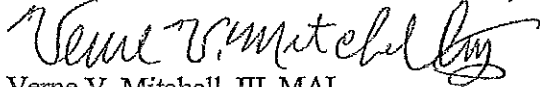
Our opinion of the market value is:

ONE HUNDRED SEVENTY THOUSAND DOLLARS
(\$170,000)

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
Member, Appraisal Institute
Indiana Certified General Appraiser
License Number CG69100097

VVM/ms

MISNER & ASSOCIATES, INC.

Industrial-Commercial Valuation Consultants

April 4, 2013

Mr. Dan Brenner
Property Manager
City of Fort Wayne
200 E. Berry Street, Suite 470
Fort Wayne, Indiana 46802

Re: Report on appraisal of *Luis Hernandez* property, 401 W. Superior Street, Fort Wayne, Allen County, Indiana.

Dear Mr. Brenner:

In accordance with your request, we have conducted an inspection of the property and have made a study of important factors having a bearing on the market value of the fee simple title to the subject real estate. The purpose of the appraisal is to provide an opinion of the market value of the fee simple interest as of the last date of inspection.

Subject to the certification and limiting conditions herein set forth, we are of the opinion that the market value of the property under investigation as of April 1, 2013, was:

ONE HUNDRED SEVENTY THOUSAND EIGHT HUNDRED DOLLARS (\$170,800)

A summary of the important factors regarding the appraisal analysis is provided on the second page following this letter. The analysis leading to the conclusion of value indicated above is detailed on the succeeding pages in this appraisal text.

Thank you for the opportunity of providing an appraisal service. If you have any questions regarding any portion of the report, please feel free to contact us at your convenience.

Very truly yours,

MISNER & ASSOCIATES, INC.



Larry D. Misner, MAI
Member, Appraisal Institute
Certified General Appraiser
CG69201580



REAL ESTATE PURCHASE AGREEMENT

The City of Fort Wayne, a municipal corporation in the County of Allen, State of Indiana ("Buyer") agrees to Purchase from Hernandez Property Investments, LLC, an Indiana Limited Liability Company ("Seller") the following property for consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth.

1. **PROPERTY TO BE SOLD.** The property to be sold and purchased under this Agreement is described as follows: That certain parcel of real estate commonly known as 401 W. Superior Street, Fort Wayne, Indiana that is legally described on the attached Exhibit "A" (the "Real Estate"), including all buildings, improvements, fixtures, tenements, hereditaments, rights, privileges, interest, easements and appurtenances belonging or in any wise pertaining to the Real Estate.

2. **PURCHASE PRICE/PAYMENT.**

2.1 **Purchase Price.** The purchase price for the Real Estate shall be One Hundred Seventy Thousand Four Hundred Dollars (\$170,400) payable in accordance with the terms and conditions stated in this agreement.

2.2 **Earnest Money.**

2.2.1 Within ten (10) business days after acceptance of this Agreement, Buyer shall deposit the sum of \$10,000 as earnest money (the "Earnest Money").

2.2.2 All Earnest Money shall be deposited in an escrow account maintained by Titan Title Services, LLC (the "Title Company"), which account shall be in a form mutually agreeable to the parties.

2.2.3 At Closing (as defined in Section 9.2), the Earnest Money shall be paid to Seller and Buyer shall receive credit toward the Purchase Price for the Earnest Money.

2.2.4 If Seller breaches this Agreement, or if Buyer is otherwise entitled under this Agreement, Buyer shall be entitled to a full, complete, and prompt refund of the Earnest Money, together with all other remedies and rights provided under this Agreement.

2.3 **Payment of Purchase Price.** At Closing, Buyer shall pay Seller the Purchase Price by wire transfer or other same day funds, less all credits due Buyer under this Agreement, including without limitation, the Earnest Money.

3. **CONVEYANCE OF REAL ESTATE, TITLE, CLOSING EXPENSES, AND PRORATIONS.**

3.1 Seller represents and warrants to Buyer that as of the date of Closing Seller will have good, merchantable and marketable title to the fee simple estate in the Real Estate. At Closing, Seller shall deliver to Buyer a warranty deed granting to Buyer the fee simple estate in the Real Estate, free and clear of any and all liens, leases, mortgages and other encumbrances of any kind or nature whatsoever, except those encumbrances set forth in Section 3.4.

3.2 Seller shall pay the following costs and expenses at or in connection with Closing: (i) the taxes and assessments due with respect to the Real Estate, as provided in this Agreement; (ii) one-half of any closing fee or escrow fee charged by the Title Company to close the transaction contemplated by this Agreement; (iii) the costs of recording the satisfaction of any unreleased mortgage on the Real Estate, and any other document necessary to make title to the Real Estate marketable; (iv) all other costs and expenses required to be paid by Seller under this Agreement; and (v) Seller's attorney fees.

3.3 Buyer shall pay the following costs and expenses at or in connection with Closing: (i) the cost of the Title Commitment as provided in Section 4.1; (ii) the cost of the Survey as provided in Section 4.2; (iii) one-half of any closing fee or escrow fee charged by the Title Company to close the transaction contemplated by this Agreement; (iv) all other costs and expenses required to be paid by Buyer under this Agreement; and (v) Buyer's attorney fees.

3.4 The conveyance of the Real Estate shall be subject to the following:

3.4.1 Taxes for the Real Estate shall be prorated to the date of Closing. Seller shall pay taxes for the Real Estate which are payable during the year in which Closing occurs, and taxes payable during the succeeding year, prorated to the date of Closing. Buyer shall assume and pay all subsequent taxes.

3.4.2 Seller shall pay any assessments or charges upon or applying to the Real Estate for public improvements or services which, on the date of Closing, have been or are being constructed or installed on or about the Real Estate, or are serving the Real Estate.

4. ***TITLE INSURANCE AND SURVEY.***

4.1 Buyer shall obtain, within fifteen (15) days after all contingencies of Exhibit "B" are met, a commitment for an owner's policy of title insurance issued by Title Company, providing for extended coverage, and in which Title Company shall agree to insure good, merchantable and marketable title to the fee simple estate in the Real Estate (the "Commitment"), subject only to the Purchase Price, upon execution and delivery of a warranty deed thereto from Seller to Buyer, accompanied by true copies of all documents which are shown as exceptions in the Commitment.

4.2 Buyer shall obtain, before or within fifteen (15) days after all contingencies of Exhibit "B" are met, a minimum-standard detail requirements for land title survey of the Real Estate by a licensed engineer or surveyor selected by Buyer, certified to Buyer and Title Company as of a then-current date, containing an accurate legal description of the Real Estate, and showing all improvements, easements, encroachments and other matters affecting the Real Estate, and including any and all underground storage tanks, fuel lines and other subsurface structures and improvements known to the surveyor to be located on the Survey (the "Survey").

4.3 Within five (5) days after receipt of the Commitment and the Survey, Buyer shall give Seller written notice of any exceptions enumerated in the Commitment and any states of fact shown on the Survey (other than permitted encumbrances described in Section 3.4) which would adversely affect Buyer's intended use of the Real Estate. Seller shall have 30 days after receipt of that notice to have any such unsatisfactory exceptions removed and any such unsatisfactory states of fact corrected; and, if Seller is unable to do so (and if Buyer does not waive such unsatisfactory exceptions or states of fact), this Agreement shall terminate, all obligations and liabilities of the parties hereunder shall cease, and the Earnest Money shall be immediately returned to Buyer.

5. **RISK OF LOSS; CONDEMNATION.**

5.1 All risk of loss or damage to the Real Estate shall be borne by Seller from the date Seller takes title to the Real Estate to and including the date of Closing.

5.2 If prior to the Closing, any governmental or other entity having condemnation authority shall institute an eminent domain proceeding against any portion of the Real Estate, or notify Seller of their intention to institute such proceedings, Buyer shall be entitled to terminate this Agreement within 20 days after notice has been delivered to Buyer of the institution or threat of eminent domain proceedings. If Buyer elects not to terminate this Agreement, then Seller shall assign to Buyer, at Closing, all of Seller's interest in such condemnation proceedings and in any resulting award. In the event Buyer elects to terminate this Agreement, Buyer shall be entitled to a prompt return of the Earnest Money.

6. **INSPECTIONS.**

6.1 Through and including April 5, 2013, Buyer, at Buyer's sole cost and expense, may conduct all Inspections of the Real Estate Buyer believes are necessary or suitable for Buyer's intended use of the Real Estate, including, without limitation, inspections, testing, or other investigations for the presence or existence of environmental conditions (collectively, the "Inspections").

6.2 Inspections may be performed by Buyer, Buyer's agents or designees, and inspection consultants and their representatives, all of whom shall have reasonable access to the Real Estate at reasonable times to perform Inspections.

6.3 Seller agrees to fully cooperate with, and provide all information and documentation requested by, inspection consultants in connection with Inspections, including without limitation, the execution of documents necessary for Inspections.

6.4 If Buyer determines there is condition or reason, whether economic or otherwise, which, in Buyer's sole discretion, will prevent or interfere with Buyer's intended use, Buyer may terminate this Agreement, and shall receive the refund of the Earnest Money.

6.5 If Buyer fails to timely conduct any Inspection permitted under Section 6.1, Buyer shall be deemed to waive the right to do so.

6.5.1 Seller shall have no financial responsibility for the Inspections.

6.5.2 If the Real Estate is damaged during the Inspections, Buyer shall cause the Real Estate to be restored to the same condition as it existed before the Inspections.

6.5.3 Buyer shall indemnify and hold Seller harmless against all claims lawsuits, damages, costs, reasonable attorney fees and expenses related to, or arising out of, the Inspections.

7. **ENVIRONMENTAL MATTERS.** Seller represents that to the best of its knowledge, without having made any inquiry, there does not currently exist any actual or potential contamination of the soil, subsoli, groundwater or any other portion of any parcel of the Real Estate by any hazardous or toxic substance, or petroleum product, or any constituent thereof.

7.1 Responsible Property Transfer Law:

7.1.1. Seller is not required to provide Buyer with a Disclosure Statement pursuant to I.C. Section 13-25-3-2 et. seq., Indiana's Responsible Property Transfer Law ("IRPTL"), because, to the best of Seller's knowledge, the Property is exempt from the provisions of the law or (a) the Property does not contain any hazardous chemical or material which must be disclosed under the federal Emergency Planning and Community Right-to-Know Act of 1986; (b) the Property does not contain any underground storage tanks which are or have been utilized to hold petroleum or other regulated substances; and (c) the Property is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System.

7.1.2 If Seller learns that the Property comes within the terms of IRPTL after execution of this Agreement, then Seller shall provide to Buyer the required disclosure document and comply with all other parts of this law.

8. **REAL ESTATE BROKER.** Buyer and Seller represent to each other that the services of a real estate broker have not been retained to handle this transaction by either party.

9. **MISCELLANEOUS.**

9.1 **Assignment.** Buyer may assign this Agreement, or the rights and obligations under it, without Seller's prior consent, to any city department or municipal entity. Buyer shall give Notice to Seller of the identity of any such assignee.

9.2 **Closing Date.** The Closing contemplated herein shall take place on or before June 28, 2013 or within thirty (30) days after all contingencies of Exhibit "B" are met. In the event Closing does not occur by June 28, 2013, and neither Seller nor Buyer is in default of this Agreement, either party shall have the right to terminate this Agreement, and the Earnest Money shall be returned to Buyer.

9.3 **Remedies.** If a party breaches any or all of its obligations under this Agreement, the non-defaulting party may seek the following remedies, which shall be cumulative and are not mutually exclusive:

9.3.1 All legal and equitable remedies available (including, without limitation, specific performance of this Agreement);

9.3.2 Termination of this Agreement;

9.3.3 Immediate delivery of all Earnest Money, including any interest due, to the party entitled to the Earnest Money under this Agreement;

9.3.4 The reasonable attorney fees, expenses and costs incurred by the non-defaulting party in connection with a default by the defaulting party, excluding consequential damages.

9.3.5 The failure to enforce a breach of this Agreement shall not be construed as a waiver of the right to enforce such breach at a later time or enforce any other breach. If a party consists of more than one person, each person who is a party shall be jointly and severally liable for such party's defaults.

9.4 *Representations and Warranties.* Representations and warranties made by Seller in this Agreement or given on Seller's behalf under this Agreement shall be true and correct in all material respects at and as of the time of Closing with the same effect as such representations and warranties had been made or given at and as of the time of Closing except for such changes as are contemplated by the terms of this Agreement, and ordinary and usual changes occurring in the Real Estate by reason of the passage of time.

9.5 *Entire Agreement.* This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement; all representations, promises and prior or contemporaneous understandings between the parties with respect to the subject matter of this Agreement are merged into and expressed in this Agreement; and any and all prior agreements between the parties with respect to the subject matter of this Agreement are canceled. The agreements contained in this Agreement shall not be amended, modified or supplemented without the written agreement of the parties at the time of such amendment, modification or supplement.

9.6 *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if sent by registered or certified mail, postage prepaid, return receipt requested, addressed as below set forth or to such other address as shall be furnished in writing by either party to the other:

If to Seller: Hernandez Property Investments, LLC
Attn: Luis Hernandez
5000 Decatur Road
Fort Wayne, IN 46806

With a copy to: Scott M. Federoff
Federoff Kuchmay, LLP
10445 Illinois Road
Fort Wayne, IN 46814

If to Buyer: City of Fort Wayne
Attn: Daniel A. Brenner
200 E. Berry Street, Suite 470
Fort Wayne, IN 46802

9.7 *Governing Law.* This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance, or otherwise by the laws of the State of Indiana.

9.8 *Gender.* Whenever reasonably necessary, pronouns of any gender shall be deemed synonymous, as shall singular and plural pronouns.

9.9 *Execution by Electronic Means/Counterparts.* The parties agree that this Agreement may be transmitted by them for execution by electronic means. The parties intend that electronic signatures on this Agreement shall be binding on them. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but together the counterparts shall constitute one and the same document.

9.10 *Computation of Time.* As used in this Agreement, the term "business days" shall mean weekdays (Monday through Friday), unless a weekday is a federal holiday, in which case such day is not a "business day". In computing a time period prescribed in this Agreement that is not described as being in "business days", the day of the act shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday.

9.11 *Additional Provisions.* See Contingencies on Exhibit "B" attached hereto.

"Buyer"

The City of Fort Wayne

By: Daniel A. Brenner
Daniel A. Brenner
Property Manager

Dated: 4-26-13

Acceptance of Purchase Agreement

The undersigned Seller accepts this Purchase Agreement and agrees to its terms, dated this 26th day of April, 2013.

"Seller"

Hernandez Property Investments, LLC,
An Indiana Limited Liability Company

By: [Signature]
Luis Hernandez, Member

Dated: 4/26/13

Exhibit "A"
Legal Description of the Real Estate

Lots Numbered 1, 2, 3, and 4 in Ewing's Out Lot Number 5, as recorded in Plat Record 2, page 40; Excepting Therefrom, that part dedicated to the City of Fort Wayne by Street Dedication recorded as Document Number 78-22757, being more particularly described as follows: A part of Lot Number 4, Block Number 5 in Ewing's Addition. Commencing at the Northwest corner of Lot Number 4, Block Number 5 in Ewing's Addition to the City of Fort Wayne; thence East 15 feet along the North property line of Lot Number 4; thence Southwesterly to a point on the West property line of said Lot Number 4 which is 20 feet South of the North property line; thence North along the West property line of Lot Number 4 to the point of beginning, an area of 150 feet.

Exhibit "B"
Contingencies

This offer is subject to the Buyer having one hundred twenty (120) days to obtain the following:

1. Obtaining a satisfactory Phase I Environmental Assessment, acceptable to Buyer.
2. Subject to the approval of the City of Fort Wayne Board of Public Works.
3. Subject to the approval of the Common Council of the City of Fort Wayne.

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs, BIDS, OTHER PROJECTS

Bid/RFP#/Name of Project	Purchase Agreement between City of Fort Wayne (Buyer) and Hernandez Property Investments, LLC (Seller) for property located at 401 West Superior Street
Awarded To	Hernandez Property Investments, LLC
Amount	\$170,400.00
Conflict of interest on file?	No – in process of obtaining
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 (State, Federal, Piggyback-Authority)	Purchase Agreement between City of Fort Wayne and Hernandez Property Investments, LLC for purchase of 401 West Superior Street
Sole Source/ Compatibility Justification	NA

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

Most Responsible, Responsive Lowest	No <i>If no, explain below</i>
If not lowest, explain	Real Estate purchased based upon average of two appraisals obtained by City

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	Increase of \$170,400.00
--	--------------------------

DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	City acquiring real estate for construction of Roundabout required for the Ewing/Fairfield Conversion Project

REQUEST FOR PRIOR APPROVAL

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

FUNDING SOURCE

<i>Account Information.</i>	Legacy and Tiff



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

July 2, 2013

City Council Members
City of Fort Wayne

RE: City of Fort Wayne/Hernandez Property Investments, LLC Purchase Agreement
401 West Superior Street

Dear Council Members:

The City has entered into a Purchase Agreement to buy the property located at 401 West Superior Street.

The purchase price is \$170,400.00 which based upon the average of two appraisals obtained by the City. Copies are attached.

The City of Fort Wayne Board of Public Works has approved this purchase.

We are asking for Council to approve this purchase.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan", is positioned above the printed name.

Daniel A. Brenner
Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

200 E. Berry St. • Fort Wayne, Indiana • 46802 • www.cityoffortwayne.org
An Equal Opportunity Employer