

1 **BILL NO. R-16-02-02**

2 **RESOLUTION NO. _____**

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6
7 **A RESOLUTION APPROVING AN ADDENDUM TO LEASE**
8 **FOR CERTAIN LOCAL PUBLIC IMPROVEMENTS BETWEEN THE FORT**
9 **WAYNE REDEVELOPMENT COMMISSION AND**
10 **THE FORT WAYNE REDEVELOPMENT AUTHORITY**
11 **AND MATTERS RELATED THERETO**
12

13
14 **WHEREAS,** the Fort Wayne Redevelopment Commission (the "Commission"),
15 governing body of the City of Fort Wayne, Indiana, Department of Redevelopment and the
16 Redevelopment District of the City of Fort Wayne, Indiana, exists and operates under the provisions
17 of the Redevelopment of Cities and Towns Act of 1953 which has been codified in Indiana Code
18 36-7-14 et seq., as amended from time to time (the "Act"); and

19 **WHEREAS,** the Commission has previously designated and declared an area
20 pursuant to the Act in the City of Fort Wayne, Indiana (the "City"), known as the Civic Center
21 Urban Renewal Area to be a redevelopment area and an allocation area (the "Area") for the purpose
22 of collecting tax increment finance revenues, adopted a Redevelopment Plan, and established an
23 allocation fund for said Area; and

24 **WHEREAS,** the Commission determined to provide for the development of an
25 urban mixed-use facility with parking, office, retail and residential uses within the Area (the
26 "Skyline Project"); and

27 **WHEREAS,** the Commission acquired all of the real estate on which the Skyline
28 Project is to be situated (the "Skyline Property") and entered into a certain Amended and Restated
29 Economic Development Agreement with Ash Brokerage Corporation ("Ash") dated August 28,
30 2014, providing for the construction of a mixed-use corporate headquarters office and retail

1 building upon the Skyline Property by Ash and the construction of a municipal parking garage (the
2 "2014 Project") upon the Skyline Property by the City; and

3 **WHEREAS**, the first phase of the 2014 Project was financed by the Fort Wayne
4 Redevelopment Authority (the "Authority") through the issuance of its \$18,365,000 Fort Wayne
5 Redevelopment Authority Lease Rental Revenue Bonds, Series 2014 A (the "2014 Bonds"); and

6 **WHEREAS**, the Commission and the Authority previously entered into an amended
7 and restated lease dated as of August 1, 2014 (the "Lease") for the lease of the 2014 Project which,
8 at the time of the execution of the Lease, was expected to be completed in two (2) phases; and

9 **WHEREAS**, the Common Council previously approved on June 24, 2014, the
10 execution of the Lease by the Commission and approved the issuance of lease rental revenue bonds
11 by the Authority in an aggregate principal amount not to exceed Twenty-three Million Five
12 Hundred Thousand and 00/100 Dollars (\$23,500,000.00); and

13 **WHEREAS**, the Commission, at a meeting on January 25, 2016, adopted Resolution
14 2016-03 which approved a proposed form of addendum to lease (the "Addendum") between the
15 Commission and the Authority for the purposes of amending the definition of the term "Project"
16 contained in the Lease to include certain local public improvements consisting of earthwork and site
17 utility improvements, compacted aggregate pier foundation system, structural and miscellaneous
18 steel framing and steel erection, and elevators (the "2016 Project") which would support the
19 development and construction of a retail, office and residential building as part of an urban mixed-
20 use building, and other related improvements; scheduled a public hearing on said Addendum to be
21 held on February 8, 2016, pursuant to Section 25.2 of the Act; and authorized the publication of a
22 notice of public hearing on said Addendum pursuant to Indiana Code 5-3-1; and

1 **WHEREAS**, the Addendum does not modify the rental payable under the Lease or
2 the term of the Lease which are subject to reduction following the issuance of bonds by the
3 Authority; and

4 **WHEREAS**, on February 8, 2016, the Commission conducted said public hearing
5 and all interested parties were provided the opportunity to be heard at the hearing; and

6 **WHEREAS**, said Resolution No. 2016-03 further authorized the Secretary of the
7 Commission to file with the Common Council of the City (the "Common Council") a resolution for
8 the purposes of said Common Council's approving of the proposed Addendum and confirming,
9 prior to the Commission's execution of said Addendum, that the rental payments payable under the
10 Lease are fair and reasonable and that the use of the Project, as such term is modified by the
11 Addendum, throughout the term of said Lease will serve the public purpose of the City and is in the
12 best interests of its residents; and

13 **WHEREAS**, the Authority has adopted a resolution, which, among other things,
14 approved the form of the Addendum, authorized the President and the Secretary-Treasurer of the
15 Authority to execute the Addendum and acknowledged that the rentals paid by the Commission
16 pursuant to such Lease and Addendum will be used by the Authority to pay the principal of and
17 interest on the 2014 Bonds and the lease rental revenue bonds (the "2016 Bonds") which the
18 Authority expressed its intent to issue in a maximum aggregate principal amount not to exceed Four
19 Million One Hundred Thousand and 00/100 Dollars (\$4,100,000.00) to finance costs of the 2016
20 Project and the costs related to the issuance of the 2016 Bonds (collectively, the "2016 Project
21 Costs"); and

1 **WHEREAS**, the Common Council desires to approve said Addendum to amend the
2 definition of the Project in the Lease and to approve of the issuance of the 2016 Bonds by the
3 Authority pursuant to Indiana Code 36-7-14.5-19;

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

6 **SECTION 1.** The Common Council hereby approves the Addendum, as approved
7 by the Commission, pursuant to Section 25.2 of the Act, in substantially the form provided at this
8 meeting and attached hereto as Exhibit A. The Common Council confirms its earlier findings with
9 respect to the Lease that the rental payments under the Lease are fair and reasonable, and that the
10 use of the Project, as such term is proposed to be amended by the Addendum to include the 2016
11 Project, throughout the term of the Lease will serve the public purpose of the City and is in the best
12 interests of its residents. The Common Council further finds with respect to the 2016 Bonds
13 proposed to be issued by the Authority, based upon information provided by H.J. Umbaugh and
14 Associates Certified Public Accountants, LLP, financial advisor to the City, that (i) the interest rates
15 on such Bonds are expected not to exceed five and one-half percent (5.5%); (ii) the Authority
16 expects to capitalize interest on the 2016 Bonds from the date of issuance of the 2016 Bonds
17 through and including not later than August 1, 2017; and (iii) the 2016 Bonds will be subject to
18 optional redemption by the Authority beginning on a date not later than ten (10) years from the date
19 of issuance of the 2016 Bonds. The Common Council hereby approves of the issuance of the 2016
20 Bonds by the Authority, as described herein, in an aggregate principal amount of not to exceed Four
21 Million One Hundred Thousand and 00/100 Dollars (\$4,100,000.00) to pay the 2016 Project Costs.

1 **SECTION 2.** This Resolution shall be in full force and effect from and after the
2 time it has been adopted by the Common Council, approved by the Mayor, and otherwise executed
3 and delivered in accordance with any and all laws pertaining thereto.

Council Member

APPROVED AS TO FORM AND LEGALITY:

Carol Helton, City Attorney

EXHIBIT A

[FORM OF ADDENDUM TO LEASE]

ADDENDUM TO LEASE
between the Fort Wayne Redevelopment Authority, as Lessor,
and the Fort Wayne Redevelopment Commission, as Lessee

THIS ADDENDUM TO LEASE (the "Addendum"), made and entered into as of this ____ day of March, 2016, by and between the Fort Wayne Redevelopment Authority, a body corporate and politic organized and existing under Indiana Code 36-7-14.5 (hereinafter with its successors and assigns referred to as the "Authority"), and the Fort Wayne Redevelopment Commission, the governing body of the City of Fort Wayne Department of Redevelopment and the Redevelopment District of the City of Fort Wayne, Indiana (hereinafter called the "Lessee"),

WITNESSETH:

WHEREAS, the Authority and the Lessee have entered into an Amended and Restated Lease dated as of August 1, 2014 (the "Lease"); and

WHEREAS, the Authority and Lessee now desire to amend the Lease in accordance with the terms and conditions set forth in this Addendum;

NOW, THEREFORE, IT IS HEREBY AGREED, CERTIFIED AND STIPULATED by the undersigned that:

1. The following definitions contained in Section 1 of the Lease are amended to read as follows:

"Bonds" means, collectively, the Series A Bonds and the Series 2016 Bonds.

"Lease Resolution" means Resolution No. 2014-14 adopted by the Lessee on July 14, 2014, as the same may be supplemented and/or amended by Lessee.

"Project" means, collectively, the 2014 Project and the 2016 Project.

"Trust Agreement" means the Trust Agreement dated as of August 1, 2014 as supplemented and amended by a First Supplemental Trust Agreement dated as of _____, 2016, between the Authority and the Trustee, securing the Bonds.

2. The "Series B Bonds" definition contained in Section 1 of the Lease is hereby deleted.

3. The following definitions are hereby added to Section 1 of the Lease as follows:

"2014 Project" means the construction of a parking structure now located upon certain real estate located in Allen County, Indiana, as described on Exhibit B attached hereto and incorporated herein, which is financed with the proceeds of the Series A Bonds.

"2016 Project" means the acquisition, construction and equipping of certain local public improvements upon the real estate located in Allen County, Indiana, as described on Exhibit C attached hereto and incorporated herein, which are to be financed by the proceeds of the Series 2016 Bonds, as part of the construction of a retail, office and residential building which local public improvements shall consist of all or any portion of the acquisition, construction and installation of the following site improvements: earthwork and site utility improvements, compacted aggregate pier foundation system, structural and miscellaneous steel framing and steel erection; and elevators.

"Series 2016 Bonds" means the Fort Wayne Redevelopment Authority Lease Rental Revenue Bonds, Series 2016.

4. Section 2 of the Lease entitled "Lease of Project" is hereby deleted and replaced with the following:

Section 2. Lease of Project. In consideration of the rentals and other terms and conditions herein specified the Authority does hereby lease, demise and let to the Lessee the Project: TO HAVE AND TO HOLD the same with all rights, privileges, easements and appurtenances thereunto belonging, unto the Lessee for a term not to exceed twenty-two (22) years, beginning on the date the Project is complete and ready for use, and ending on the day prior to such date at most twenty-two (22) years thereafter. However, the term of this Lease shall terminate at the earlier of

(a) the exercise of the option to purchase by Lessee and payment of the option price, or (b) the payment or defeasance of all obligations of Lessor incurred (i) to finance the cost of the leased property, (ii) to refund such obligations, (iii) to refund such refunding obligations. The date the Project is complete and ready for use shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after such completion date and such endorsement shall be recorded as an addendum to this Lease. The Authority hereby represents that it is possessed of, or will acquire, a good and indefeasible estate in fee simple or an insurable right-of-way easement subject only to Permitted Encumbrances, to the above-described real estate, and the Authority warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of the Lessee.

Notwithstanding the foregoing, the Project may be modified to add additional property to the Project or remove any portion of the Project, provided, however, following such modification, the rental payable under this Lease shall be based on the value of the portion of the Project which is available for use, and the rental payments due under this Lease shall be in amounts sufficient to pay when due all principal of and interest on all outstanding Bonds. If any part of the Project shall be partially or totally destroyed, or is taken under the exercise of the power of eminent domain, so as to render it unfit, in whole or part, for use or occupancy by the Lessee, as described in Section 5 hereof, the Lessee and the Authority agree to substitute other public improvements of similar value as that portion of the Project so destroyed or taken, which substitute improvements shall then constitute a part of the Project under this Lease.

5. Section 4 of the Lease entitled "Rental Payment Dates and Amounts" is hereby deleted and replaced with the following:

Section 4. Rental Payment Dates and Amounts. The maximum semiannual lease rental that may be paid under the terms of this Lease for the Project (i) through and including January 15, 2028 shall not exceed Nine Hundred Fifty Thousand and 00/100 Dollars and (ii) thereafter through expiration of this Lease, shall not exceed One Million Two Hundred Thousand and 00/100 Dollars. The first semiannual rental installment to be paid with respect to 2014 Project shall be in the amount of Five Hundred Fifty-seven Thousand Five Hundred and 00/100 Dollars (\$557,500.00) shall be due on the day that 2014 Project is completed and ready for use or July 15, 2016, whichever is later. If completion of 2014 Project is later than July 15, 2016, the first installment shall be in an amount which provides for rental at the rate of \$557,500.00 for the semiannual period in which 2014 Project is completed and ready for use, prorated from the date of completion until the first January 15 or July 15 following such date of completion. Thereafter such rentals for 2014 Project shall be payable in advance in semiannual installments in the

amount as provided in the Schedule 1, attached hereto, on January 15 and July 15 of each year through and including January 15, 2034. The last semiannual rental payment due before the expiration of this Lease shall be adjusted to provide for rental at the amount specified above for the applicable semiannual period prorated from the date such installment is due to the date of the expiration of this Lease (without taking into account any subsequent early termination of this Lease pursuant to Section 2 hereof).

After the sale of the Series 2016 Bonds issued by the Authority, the sum of the semiannual rental installments due in each year (ending January 15) shall be reduced to an amount equal to the multiple of One Thousand Dollars (\$1,000.00) next highest to the highest sum of principal and interest due on the Bonds in any year ending on February 1 plus Five Thousand Dollars (\$5,000.00), payable in equal semiannual installments. Such amount of reduced annual rental shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after the sale of the Series 2016 Bonds, and such endorsement shall be recorded as an addendum to this Lease.

The Lessee will not take any action or fail to take any action that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the Bonds pursuant to Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"), as in effect on the date of delivery of the Bonds, nor will the Lessee act in any manner which would adversely affect such exclusion. The Lessee further covenants that it will not make any investment or do any other act or thing during the period that any Bond is outstanding hereunder which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations thereunder as in effect on the date of delivery of the Bonds. All officers, members, employees and agents of the Lessee are authorized and directed to provide certifications of facts and estimates that are material to the reasonable expectations of the Lessee as of the date the Bonds are issued and to enter into covenants on behalf of the Lessee evidencing the Lessee's commitments made herein.

6. Section 5 of the Lease entitled "Abatement of Rent" is hereby deleted and replaced with the following:

Section 5. Abatement of Rent. In the event that all or a portion of the Project shall be damaged or destroyed so as to render the damaged or destroyed portion of the Project unfit for its intended use, it shall then be the obligation of the Authority to restore and reconstruct the damaged or destroyed portion of the Project as promptly as may be done, unavoidable strikes and other causes beyond the control of the Authority excepted, if, in the opinion of an independent registered architect, registered engineer, construction manager or contractor selected by the Lessee and acceptable

to the Trustee, (i) the cost of such restoration or reconstruction does not exceed the amount of the proceeds received by the Authority from the insurance provided for in Section 9 hereof plus other moneys available therefor and (ii) such restoration or reconstruction can be completed within the period of time covered by the rental value insurance provided for in Section 9 hereof. If either or both conditions shall not exist, the proceeds received from the insurance provided for in Section 9 hereof shall be applied to the option to purchase price provided for in Section 14 hereof. In the event the 2014 Project or the 2016 Project is either damaged or destroyed so as to render such portion of either unfit for its intended use, the rental on such project shall be abated pro rata for the period during which the damaged or destroyed portion is unfit for its intended use. The foregoing is subject to the substitution provision set forth in Section 2 hereof.

7. The following is added as Exhibit C to the Lease:

EXHIBIT C

2016 PROJECT DESCRIPTION

The 2016 Project is located on the following real estate:

Lots 495 through 497 and Lot 508 in The West Part of Hanna's Addition to Fort Wayne, together with a vacated alley lying adjacent to the Easterly line of said Lot 495 and Lot 508 and a vacated alley lying between the Northerly line of Lot 495 and the Southerly line of Lot 508, according to the plat thereof as originally recorded in Deed Record C, page 525 and reprinted in Plat Record 0, page 16 in the Office of the Recorder of Allen County, Indiana, more particularly described as follows:

Commencing at the Southeasterly corner of Lot 492 in said West Part of Hanna's Addition to Fort Wayne; thence Southwesterly on the Southerly line thereof and continuing on the Southerly line of Lot 493 and Lot 494 in said West Part of Hanna's Addition to Fort Wayne, a distance of 180.00 feet to the Southwesterly corner of said Lot 494 and the POINT OF BEGINNING; thence continuing Southwesterly on the Southerly line of a vacated alley and continuing on the Southerly line of said Lots 495 through 497, a distance of 190.00 feet to the Southwesterly corner of said Lot 497; thence Northwesterly on the Westerly line of said Lot 497, by a deflection angle to the right of 89 degrees 59 minutes 01 second from the previously described course, a distance of 150.00 feet to the Northwesterly corner of said Lot 497; thence Northeasterly on the Northerly line of said Lot 497 and continuing on the Northerly line of said Lot 496, by a deflection angle to the right of 90 degrees 00 minutes 59 seconds from the previously described course, a distance of 120.00 feet to the Northeasterly

corner of said Lot 496; thence Northwesterly on the Southeasterly extension of said Lot 508 and continuing on the Westerly line of said Lot 508, by a deflection angle to the left of 90 degrees 00 minutes 59 seconds from the previously described course, a distance of 164.00 feet to the Northwesterly corner of said Lot 508; thence Northeasterly on the Northerly line of said Lot 508 and continuing on the Northerly line of a vacated alley, by a deflection angle to the right of 90 degrees 00 minutes 59 seconds from the previously described course, a distance of 70.00 feet to the Northwesterly corner of Lot 509 in said West Part of Hanna's Addition to Fort Wayne; thence Southeasterly on the Westerly line of said Lot 509 and continuing on the Westerly line of said Lot 494, by a deflection angle to the right of 89 degrees 59 minutes 01 second from the previously described course, a distance of 314.00 feet to the point of beginning, containing 39,978.66 square feet, or 0.918 acre, more or less.

8. Except as modified herein, all of the other terms, covenants and conditions of the Lease shall remain in full force and effect and are affirmed by Authority and Lessee.

9. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Lease.

10. This Addendum is effective as of its date.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed for and on their behalf as of the day and year first hereinabove written.

FORT WAYNE
REDEVELOPMENT AUTHORITY

By: _____
_____, President

ATTEST:

_____, Secretary-Treasurer

FORT WAYNE
REDEVELOPMENT COMMISSION

By: _____
_____, President

ATTEST:

_____, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known by me to be the President and Secretary-Treasurer, respectively, of the Board of Directors of the Fort Wayne Redevelopment Authority, and acknowledged the execution of the foregoing Addendum to Lease for and on behalf of said Authority.

WITNESS my hand and Notarial Seal this _____ day of _____, 2016.

(SEAL)

(Written Signature)

(Printed Signature)

My commission expires: _____.

I am a resident of _____ County, Indiana.

(Notary page to Addendum to Lease)

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known by me to be the President and Secretary, respectively, of the Fort Wayne Redevelopment Commission, and acknowledged the execution of the foregoing Addendum to Lease for and on behalf of said Commission.

WITNESS my hand and Notarial Seal this ____ day of _____, 2016.

(SEAL)

(Written Signature)

(Printed Signature)

My commission expires: _____.

I am a resident of _____ County, Indiana.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Randolph R. Rompola.

This instrument prepared by Randolph R. Rompola, Faegre Baker Daniels LLP, 202 S. Michigan Street, Suite 1400, Fort Wayne, Indiana 46601.

(Notary page to Addendum to Lease)

