

1
2 **BILL NO. R-17-08-26**

3 **RESOLUTION NO. _____**

4 **A RESOLUTION APPROVING THE**
5 **ACQUISITION OF CERTAIN REAL**
6 **ESTATE LOCATED AT 2015**
7 **MORRIS STREET FOR THE CITY**
8 **OF FORT WAYNE, BY AND**
9 **THROUGH THE DIVISION OF**
10 **PUBLIC WORKS.**

11 **WHEREAS**, the City of Fort Wayne, through its Division of Public
12 Works, desires to acquire property located at 2015 MORRIS STREET, FORT
13 WAYNE, INDIANA 46802., specifically described in the Donation Agreement,
14 Exhibit "A," attached hereto and made a part hereof; and

15 **WHEREAS**, Wells Fargo Bank is donating this property to the
16 City of Fort Wayne; and

17 **WHEREAS**, the Donation Agreement for the property located at
18 2015 MORRIS STREET, FORT WAYNE, INDIANA 46802 is submitted to the
19 Common Council for approval.

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

22 **SECTION 1.** The acquisition of real estate by the City of Fort
23 Wayne through its Division of Public Works, located at 2015 Morris Street, Fort
24 Wayne, Indiana, 46802, specifically described in the Donation Agreement,
25 Exhibit "A," is hereby approved and agreed to. The appropriate officials of the
26 City are hereby authorized to execute all documents necessary to accomplish
27

1 said donation.

2 **SECTION 2.** This Resolution shall be in full force and effect from
3 and after its passage and any and all necessary approval by the Mayor.
4

5
6 _____
7 Council Member

8
9 APPROVED AS TO FORM AND LEGALITY

10
11 _____
12 Carol Helton, City Attorney

Approval of Donation Agreement between Wells Fargo Bank, NA and the City of Fort Wayne regarding the conveyance of 2015 Morris Street from Wells Fargo Bank to the City of Fort Wayne at a cost of zero dollars (\$0.00).

The City of Fort Wayne

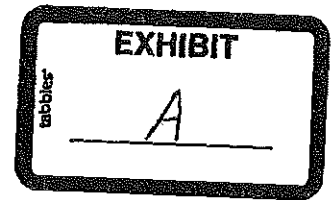
BOARD OF PUBLIC WORKS

BY: Absent
Robert P. Kennedy, Chair

BY: Mike Avila
Mike Avila, Member

BY: [Signature]
Kumar Menon, Member

Attest By: Lyndsey L. Richards
Lyndsey L. Richards, Clerk



DONATION AGREEMENT

This Donation Agreement (the "Agreement") for certain real property located at **2015 MORRIS ST, FORT WAYNE, IN 46802** ("Property"), is effective upon the Effective Date (defined below), between **WELLS FARGO BANK, N.A.**, whose address is 8480 Stagecoach Cir, Frederick, MD 21701 ("Donor") and **CITY OF FORT WAYNE, A MUNICIPAL CORPORATION, IN ALLEN COUNTY, IN THE STATE OF INDIANA**, whose address is _____ ("Donee"). It is agreed that upon the terms and conditions set forth in this Agreement the Donor shall donate and convey all of its rights and interests in, and the Donee shall accept and be the successor to all such rights and interests in, the real property identified and described herein. Donor and Donee may each be referred to as a "Party" and collectively as the "Parties".

RECITALS

In consideration of the mutual covenants of the Parties contained in this Agreement, Donor does grant to Donee title to the Property and Donee accepts from the Donor title to the Property under the following terms and conditions:

- A. Donor acquired the Property identified on Exhibit A through the foreclosure process or by a deed in lieu of foreclosure;
- B. Donor did not originally construct any of the improvements forming part of the Property;
- C. Donor has not occupied the Property for its own use;
- D. Due to Donor's lack of familiarity with the Property, Donor is unwilling to make any representations or warranties whatsoever regarding the Property and Donor is only willing to grant Donee the Property on an "as is, where is" and "with all faults" basis; and
- E. Donee has been given a full and complete opportunity to conduct its own investigation as to any matter, fact or issue that might influence Donee's decision to accept the Property from Donor. Accordingly, Donee is willing to accept the Property from Donor without any representations or warranties whatsoever regarding the Property and on an "as is, where is" and "with all faults" basis.

AGREEMENT

1. DONATION.

- 1.1 Effective Date.** The date this Agreement is signed by both Parties shall be (the "Effective Date") of the Agreement.
- 1.2 Purchase Price.** The purchase price for the Property shall be ONE and 00/100 Dollars (\$1.00) (the "Purchase Price"). However, the amount payable by the Donee to Donor for the purposes of this transaction as the consideration to be paid shall be ZERO and 00/100 Dollars (\$0.00) (the "Total Adjusted Sales Price"). The term Total Adjusted Sales Price has been determined by the Donor and

Donee taking certain agreed upon sums and applying such sums to the following formula: (a) the Purchase Price less (b) Donor adjustments of -\$1.00.

1.3 Closing. Donee may choose the Donor's Preferred Title Company (defined below) or any other third party.

- (a) Upon Donee's acceptance of the Donor's offer, Donor shall provide to Donee a suggested company ("Donor's Preferred Title Company") to act as the closing agent and title company.
- (b) If Donee selects Donor's Preferred Title Company to act as the closing agent and the title company, then Donor shall pay all costs associated with the conveyance of title to the Property, including attorneys' fees and costs, agents' fees, documentary stamp taxes and recording costs ("Closing Costs").
- (c) If Donee selects a third party other than Donor's Preferred Title Company to act as the closing agent or the title company, then Donor shall pay Closing Costs in the amount of the lesser of (a) \$2,500.00 or (b) the actual amount of Closing Costs.
- (d) The Donee will notify the Donor of the title company and closing agent Donee has selected by completing the selection form attached hereto as Exhibit "B".

1.4 Transfer. Donor agrees to donate the Property to Donee and Donee agrees to accept the Property from Donor on the terms and conditions set forth herein. In consideration of Donor's transfer of the Property to Donee, Donee shall perform all of Donee's obligations hereunder including but not limited to the release set forth in Section 2.2 of this Agreement.

1.5 Deed. Title shall be transferred on the Closing Date via a Deed (which Deed may be known as a Special Warranty, Limited Warranty, Quit Claim or Bargain and Sale Deed). Any reference to the term "Deed" herein shall be construed to refer to such form of Deed. Donor shall be responsible for recording the Deed following the Closing Date. The Deed to be delivered on the Closing Date shall be a Deed in which the Grantor therein grants and conveys to the Grantee therein only that title to, or interest and rights in, the Property granted therein that the Grantor may have at the time of the grant, and shall contain no warranty, guaranty or indemnification of any kind, express or implied.

1.6 Title and Examination. Within five (5) days from the Effective Date, Donor will order a title commitment for a: (a) title insurance policy (the "Title Commitment"), or (b) a title report or opinion of title (the "Title Opinion") and provide a copy to Donee upon request or on the Closing Date. Donor will provide marketable title to the Property, which shall be acceptable to Donee in its absolute discretion and as a condition and contingency to Donee's obligation to accept the Property under this Agreement.

- 1.7 **Taxes and Utilities.** The Parties agree that the Donor will only be responsible for the following expenses due as of the Closing Date: municipal water and sewer charges, utility charges, real estate taxes and assessments, common area charges, condominium or planned unit development or similar community assessments, co-operative fees, maintenance fees, and rents, if any. The Property taxes will be prorated based on an estimate of actual taxes from the previous year on the Property. All prorations will be based upon a 30-day month and all such prorations shall be final. Donor will not be responsible for any amounts due, paid or to be paid after closing, including but not limited to, any taxes, penalties or interest assessed or due as a result of retroactive, postponed or additional taxes resulting from any change in use of, or construction on, or improvement to the Property, or an adjustment in the appraised value of the Property.
- 1.8 **Risk of Loss.** In the event of fire, destruction, or other casualty loss to the Property after the Effective Date, and prior to the Closing Date, (a) Donor may, at its sole discretion, repair or restore the Property, or (b) either Party may terminate the Agreement. If Donor elects to repair or restore the Property, then Donor may, in its sole discretion, limit the amount to be expended. If Donor elects not to repair or restore the Property, Donee shall either (a) acquire the Property in its AS-IS condition at the time of such acquisition, or (b) terminate the Agreement.
- 1.9 **Eminent Domain.** In the event that the Donor's interest in the Property, or any part thereof, shall have been taken by eminent domain, or shall be in the process of being taken on or before the Closing Date, either Party may terminate the Agreement and neither Party shall have any further rights or liabilities hereunder.

2. **ACKNOWLEDGMENTS AND RELEASE.**

- 2.1 **DONEE'S ACKNOWLEDGMENTS.** DONEE ACKNOWLEDGES THAT DONEE IS ACCEPTING THE PROPERTY SOLELY IN RELIANCE ON DONEE'S OWN INVESTIGATION, AND THE PROPERTY IS IN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE. DONEE EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENT OF DONOR HEREIN, AND EXCEPT AS OTHERWISE SPECIFIED HEREIN, DONOR MAKES AND HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO THE PROPERTY OR ANY MATTER RELATED THERETO, OR (WITHOUT LIMITATION) TO ANY OF THE FOLLOWING MATTERS:
- (a) **Soils, Etc.** Soils, seismic, hydrological, geological and topographical conditions and configurations.
 - (b) **Artifacts.** Archeological, prehistoric and historic artifacts, remains and relics.

- (c) Endangered Species. Endangered plant, animal and insect species.
- (d) Hazardous Materials. Hazardous Materials and other environmental conditions, including without limitation, lead-based paint, asbestos and mold.
- (e) Physical Defects. Physical and mechanical defects in or on the Property, including without limitation, the plumbing, heating, air conditioning and electrical systems and the roof, floor, ceilings, walls and other internal structural components of any buildings or improvements.
- (f) Land and Floor Area. The area of the land and the square footage contained in any buildings or improvements.
- (g) Utilities, Schools, Etc. Availability of adequate utilities, water; schools, public access, and fire and police protection.
- (h) Assessment Districts. The status and nature of any assessment districts and the amount of any assessment liability.
- (i) Planning and Zoning. Present, past or future conformity of the Property with planning, building, zoning, subdivision and development statutes, ordinances, regulations and permits, the general plan and the specific plan.
- (j) Development Fees. The character and amount of any fee, charge or other consideration which must be paid by Donee to develop the Property.
- (k) Title. The condition of title to the Property, including but not limited to the existence of any easement, license or encroachment whether or not a matter of public record, and whether or not visible upon inspection of such Property.
- (l) Taxes. The status of any general or special real property taxes or assessments or personal property taxes or any other taxes and assessments applicable to the Property.
- (m) Owner's Association. The financial condition of any owner's association, including, without limitation, the adequacy of any reserves held by any owner's association.
- (n) Other Matters. Any other matter relating to the Property or to the development or operation of the Property, including, but not limited to, value, feasibility, cost, governmental permissions or entitlements, marketability, investment return and compliance of the Property, its operation or use with any laws, rules, ordinances, regulations or codes of any government or other body.

2.2 RELEASE.

- (a) **RELEASE.** DONEE FULLY RELEASES AND DISCHARGES DONOR FROM AND RELINQUISHES ALL RIGHTS, CLAIMS AND ACTIONS THAT DONEE MAY HAVE OR ACQUIRE AGAINST DONOR WHICH ARISE OUT OF OR ARE IN ANY WAY CONNECTED WITH THE CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION (A) ANY MATTER SET FORTH IN SECTION 2.1 ABOVE, (B) THE PRESENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT ANY PROPERTY (INCLUDING BUT NOT LIMITED TO ANY UNDISCOVERED HAZARDOUS MATERIALS LOCATED BENEATH THE SURFACE OF THE PROPERTY) AND (C) VIOLATIONS OF ANY HAZARDOUS MATERIALS LAWS PERTAINING TO THE PROPERTY OR THE ACTIVITIES THEREON. THIS RELEASE APPLIES TO ALL DESCRIBED RIGHTS, CLAIMS AND ACTIONS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, PRESENT OR FUTURE.
- (b) **MEANING.** FOR PURPOSES OF THIS SECTION 2.2, ALL REFERENCES TO "DONOR" SHALL INCLUDE: (A) DONOR'S PARENT, SUBSIDIARY AND AFFILIATE CORPORATIONS, (B) DONOR'S DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS, AND (C) THE HEIRS, SUCCESSORS, PERSONAL REPRESENTATIVES AND ASSIGNS OF DONOR'S DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS.
- (c) **EFFECTIVENESS.** THE PROVISIONS OF THIS SECTION 2 SHALL BE EFFECTIVE AS OF THE CLOSING DATE AND SHALL SURVIVE THE CLOSING DATE OR TERMINATION OF THIS AGREEMENT.

3. TIME IS OF THE ESSENCE: CLOSING DATE.

- 3.1 It is agreed that time is of the essence with respect to all dates specified in this Agreement and any addenda, riders or amendments thereto, meaning that all deadlines are intended to be strict and absolute. The Agreement shall terminate automatically, and without notice, if it is not concluded by the Closing Date, or any agreed extension thereof.
- 3.2 The closing shall take place on or before **August 24, 2017** (the "Closing Date"), unless the Closing Date is extended in writing signed by Donor and Donee or extended by Donor under the terms of this Agreement. The closing shall be held in the offices of the title company of Donee's choice, Donor's attorney or Donee's attorney, or at a place so designated and approved by Donor, unless otherwise

required by applicable law. If the closing does not occur by the date specified in this Section or in any extension, this Agreement is automatically terminated.

4. **GENERAL PROVISIONS.**

- 4.1 **Entire Agreement.** This Agreement contains the entire agreement between the parties concerning the Donation and sale of the property, and supersedes all prior written or oral agreements between the parties to this Agreement. No addition to or modification of any term or provision shall be effective unless in writing, signed by both Donor and Donee.
- 4.2 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.
- 4.3 **Partial Invalidity.** If any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Agreement.
- 4.4 **Termination.** Prior to the Closing Date, this Agreement may be terminated by Donor at any time for any or no reason by written notice to Donee.
- 4.5 **Governing Law.** The parties intend and agree that this Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.
- 4.6 **No Third Parties Benefits.** No person other than Donor and Donee, and their permitted successors and assigns, shall have any right of action under this Agreement.
- 4.7 **Waivers.** No waiver by either party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either Party of the same or any other provision.
- 4.8 **Captions.** The captions and Section numbers of this Agreement are for convenience and in no way define or limit the scope or intent of such Sections of this Agreement.
- 4.9 **Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing

the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

4.10 No Presumption. All the parties hereto and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Agreement and all documents attached as exhibits. Accordingly, such documents shall be construed without regard to any presumption or other rule of construction whereby any ambiguities within this Agreement would be construed or interpreted against the party causing the document to be drafted.

4.11 Notices. Any notices or other communication required or permitted under this Agreement shall be in writing, and shall be personally delivered, or sent by certified or registered United States mail, postage prepaid, return receipt requested, or by overnight delivery by a reputable courier to the address of the party set forth in this Section, or sent by fax to the Fax number of the party set forth in this Section, or sent by e-mail to the party set for in this Section. Such notice or communication shall be deemed given if sent by personal delivery or by overnight courier, when delivered in person, if sent by fax, when evidence of successful transmission by telecopier has been received by sender or, in the case of mailed notice, forty-eight (48) hours following deposit in the United States mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

If to the Donee: **CITY OF FORT WAYNE, A MUNICIPAL CORPORATION,
IN ALLEN COUNTY, IN THE STATE OF INDIANA**

Address:

If to the Donor: Owner

1 Home Campus
Des Moines, Iowa 50328-0001
PASDonations@wellsfargo.com

4.12 Joint and Several. If more than one person or entity has executed this Agreement as Donee, the obligations of all such persons or entities hereunder shall be joint and several.

[Signatures on the next page]

DONEE:

**CITY OF FORT WAYNE, A MUNICIPAL CORPORATION, IN ALLEN COUNTY, IN
THE STATE OF INDIANA**

Signature: _____

Print Name: _____

Title: _____

Date: _____

DONOR:

WELLS FARGO BANK, N.A.

Signature: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT "A"

PROPERTY ADDRESS:

2015 MORRIS ST
FORT WAYNE, IN 46802

LEGAL DESCRIPTION:

TAX PARCEL NO:

EXHIBIT "B"
Closing Representative Addendum

DONEE: CITY OF FORT WAYNE, A MUNICIPAL CORPORATION, IN ALLEN COUNTY, IN THE STATE OF INDIANA

DATE: 7/10/2017

Donee may use counsel or closing agent of choice as representation at the closing subject to Donor's approval of such counsel or closing agent.

Please select ONE of the following options for closing:

☐ Donee selects Donor's Preferred Title Company to act as the closing agent and the Title Company.

OR

☐ Donee proposes the following Representative. If the Donee chooses not to use the Donor's Preferred Title Company to act as the closing agent and the Title Company, then the following section will need to be completed. Please note this box **MUST** be selected to qualify for Donor to pay Closing Costs in the amount of the lesser of (a) \$2,500.00 or (b) the actual amount of Closing Costs.

Please provide contact information for Donee's chosen Title Company:

Company:

Company Mailing Address:

Contact Name:

Phone:

Email:

Should Donee's counsel or closing agent information change prior to closing, Donee shall promptly notify Donor of such change in writing, which representation shall be subject to Donor's approval.

Dated: _____

Donee Name (printed)

Donee (signature)

Dated: _____

Donor Name (printed)

Donor (signature)

ADDENDUM TO DONATION AGREEMENT

EFFECTIVE DATE: The date on which this addendum is signed by both the Donee and Donor shall be the effective date of the agreement.

PROPERTY ADDRESS: 2015 MORRIS ST, FORT WAYNE, IN 46802

DONEE: CITY OF FORT WAYNE, A MUNICIPAL CORPORATION, IN ALLEN COUNTY, IN THE STATE OF INDIANA

DONOR: WELLS FARGO BANK, N.A.

☒ Other: DONEE TO RECEIVE \$10,000.00 SELLER CONCESSION FROM DONOR AT CLOSING.

DONOR:
WELLS FARGO BANK, N.A.

DONEE:
CITY OF FORT WAYNE, A MUNICIPAL CORPORATION, IN
ALLEN COUNTY, IN THE STATE OF INDIANA

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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	Donation Agreement between City of Fort Wayne and Wells Fargo Bank for property located at 2015 Morris Street
Awarded To	Wells Fargo Bank
Amount	N/A
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 (State, Federal, Piggyback--Authority)	Donation Agreement between City of Fort Wayne and Wells Fargo Bank for the acquisition of 2015 Morris 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	Property donated to City by Wells Fargo Bank

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 as part of its ongoing plan to acquire property in this flood prone area

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	Yes
	Wells Fargo Bank will not add contingencies to their donation agreements
	The City is acquiring a property located in a flood prone area at no cost to be converted to green space; therefore we believe a request for prior approval is justified

FUNDING SOURCE

<i>Account Information.</i>	Flood Control Operating Budget



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

August 17, 2017

City Council Members
City of Fort Wayne

RE: City of Fort Wayne/Wells Fargo Bank Donation Agreement
2015 Morris Street

Dear Council Members:

The City has entered into a Donation Agreement to acquire the property located at 2015 Morris Street. A copy is attached.

Wells Fargo Bank is donating this parcel to the City at no cost.

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

We are asking for Council to approve this donation.

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

Sincerely,

A handwritten signature in cursive script that reads "Daniel A. Brenner".

Daniel A. Brenner
Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

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