

**A RESOLUTION OF THE
COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA,
REGARDING AN ENVIRONMENTAL INDEMNIFICATION AGREEMENT
FOR THE NORTH RIVER PROPERTY**

WHEREAS, the City of Fort Wayne, Indiana ("City"), acting by and through the its Department of Redevelopment ("Redevelopment"), is authorized by Indiana Code 36-7-14-19 to acquire interests in real estate in need of redevelopment; and

WHEREAS, Redevelopment has, pursuant to Indiana Code 36-7-14-19, entered into an agreement to acquire a parcel of real estate in need of redevelopment containing approximately thirty (30) acres laying immediately north of the St. Mary's River and west of Clinton Street near downtown Fort Wayne, which property is legally described on Exhibit A to this Resolution ("North River Property"); and

WHEREAS, the North River Property is located within the North River Urban Renewal Area as established by Redevelopment by virtue of Declaratory Resolution 2002-50, dated November 18, 2002, and Confirmatory Resolution 2002-64, dated December 23, 2002, as adopted by the Fort Wayne Redevelopment Commission ("URA Resolutions"); and

WHEREAS, the North River Property is subject to and covered by the North River Urban Renewal Plan for the North River Urban Renewal Area prepared by Redevelopment and dated November, 2002 ("URA Plan").

1 WHEREAS, Redevelopment has determined that the North River
2 Property is in need of redevelopment and that the acquisition of the North River
3 Property will support the redevelopment goals of the City of Fort Wayne expressed
4 in the URA Resolutions and the URA Plan; and
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6 WHEREAS, Redevelopment has engaged in due diligence
7 investigations regarding the environmental condition of the North River Property and
8 has determined that assuming responsibility for any remediation required for the
9 redevelopment of the North River Property is a reasonable and necessary condition
10 to achieving the redevelopment of the North River Property to support the
11 redevelopment goals of the City of Fort Wayne expressed in the URA Resolutions
12 and the URA Plan; and
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14 WHEREAS, as a condition of Redevelopment's acquisition of the
15 North River Property, the City must agree to indemnify and hold the current owner
16 and seller of the North River Property harmless from and against the cost of the
17 environmental remediation required for redevelopment of the North River Property
18 in the form of the Environmental Indemnification Agreement attached to this
19 Resolution as Exhibit B; and
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21 WHEREAS, City is authorized to provide such indemnification and
22 hold harmless pursuant to Indiana Code 36-1-4-7.5; and
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24 WHEREAS, subject to the satisfaction of all other conditions
25 precedent to the acquisition of the North River Property by Redevelopment, it is in
26 the best interests of the citizens of the City of Fort Wayne to support the
27 redevelopment of the North River Property and the redevelopment goals of the City
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1 by agreeing to indemnify and hold the owner and seller of the North River Property
2 harmless from and against the cost of any remediation required during the process of
3 redevelopment of the North River Property to support the redevelopment goals of the
4 City of Fort Wayne expressed in the URA Resolutions and the URA Plan;
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6 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
7 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

8 1. The Common Council finds, determines, ratifies and confirms
9 that the North River Property is a property in need of redevelopment and that
10 acquisition of the North River Property is in the best interests of the Citizens of Fort
11 Wayne and will support the redevelopment goals of the City of Fort Wayne
12 expressed in the URA Resolutions and the URA Plan.
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14 2. The Common Council further finds, determines, ratifies and
15 confirms that the execution and delivery of the Environmental Indemnification
16 Agreement for the North River Property attached hereto as Exhibit B is hereby in all
17 things approved as reasonable and necessary to acquire the North River Property and
18 support the redevelopment goals of the City of Fort Wayne expressed in the URA
19 Resolutions and the URA Plan.
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21 3. The Common Council hereby authorizes the Mayor and the
22 Clerk to execute and deliver the Environmental Indemnification Agreement upon the
23 completion of all other conditions precedent to the acquisition of the North River
24 Property by Redevelopment.
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26 4. This Resolution shall be in full force and effect from and after
27 the time it has been adopted by Common Council, approved by the Mayor and
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1 otherwise executed and delivered in accordance with any and all laws appertaining
2 thereto.
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4 _____
Council Member

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6 APPROVED AS TO FORM AND LEGALITY:
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Carol Helton, City Attorney
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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

Lots Numbered 117, 118, 119, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152 and the East 47 feet of 139 in North Side Addition to the City of Fort Wayne, Indiana, according to the plat thereof, as recorded in Deed Record 35, page 112, in the Office of the Recorder of Allen County, Indiana.

PARCEL 2:

Lots Numbered 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40 in St. Vincent's Place Addition to the City of Fort Wayne, Indiana, according to the plat thereof, as recorded in Plat Record 12, page 30, in the Office of the Recorder of Allen County, Indiana and that portion of vacated Putnam Street lying adjacent to the North of Lots 28 and 40, as vacated by Declaratory Resolution Number 1331-1973.

PARCEL 3:

All that part of Lots Numbered 1 and 2 Feeder Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Plat record 3, page 2, in the Office of the Recorder of Allen County, Indiana, lying East of the East property line of Harrison Street, and North of the North line of the following described tract made in accordance with a deed recorded March 6, 1981 in Deed Record Book 120, page 142, which tract is described as follows:

Commencing at a point on the South side of the Canal Feeder at the water edge where the line between the land of Hugh B. Reed, situate North of the St. Mary's River and the land bought by C. D. Fleming and S. B. Bond and Jones from S. B. Varnum produced northward would strike the said Canal Feeder; thence Southward along said line Four Hundred fifty (450) feet to a stake; thence Westward three hundred twenty-four (324) feet along the center line of Sixth Street to a stake; thence Northerly and at right angles Three Hundred Thirty-seven (337) feet to the water edge of said Feeder and thence Eastwardly along said water edge to the place of beginning in Allen County, Indiana.

PARCEL 4:

Block A in St. Vincent's Place Addition to the City of Fort Wayne, Indiana, according to the plat thereof, as recorded in Plat Record 12, page 30, in the Office of the Recorder of Allen County, Indiana.

PARCEL 5:

All that part of Lot Number 42 Feeder Addition to the City of Fort Wayne, Indiana, according to the plat thereof, as recorded in Plat Record 3, page 2, in the Office of the Recorder of Allen County, Indiana, which lies South of the North property line of Putnam Street produced and extended East across said Lot.

PARCEL 6:

A part of Lot Number 8 in the plat of Wells Reserve, Allen County, Indiana, described as follows: Beginning at the Northwest corner of Sixth and Calhoun Streets in the City of Fort Wayne, Indiana, thence running North along the West side of said Calhoun Street 419.9 feet; thence running West and Southerly 264.4 feet to a point on the East side of Harrison Street in said City 329.4 feet North of the Northeast corner of said Harrison and Sixth Street; thence from said point

South along the East side of said Harrison Street to the Northeast corner of said Harrison and Sixth Street, thence due East 250 feet to the place of beginning.

PARCEL 7:

All that parcel of land situated in the City of Fort Wayne, County of Allen, and State of Indiana being in section 2, Township 30 North, Range 12 East and section 35, Township 31 North, Range 12 East, and being a part of Lots Numbered 6 and 8 in Wells Reserve, separately bounded and described as follows, to-wit:

COMMENCING at the intersection of the North right-of-way line of Fourth street and the East right-of-way line of North Calhoun street, said point being the Point of Beginning; thence Northerly along the East right-of-way line of said North Calhoun street on an assumed bearing of North 00 degrees 00 minutes 00 seconds East 1136.40 feet; thence North 70 degrees 02 minutes 00 seconds East 185.00 feet; thence North 36 degrees 02 minutes 00 seconds East 248.20 feet; thence North 17 degrees 51 minutes 00 seconds East 43.10 feet; thence North 18 degrees 47 minutes 50 seconds East 335.08 feet; thence North 60 degrees 54 minutes 00 seconds East 16.81 feet to a point 32.00 feet West of the centerline of the mainline tract of the former Fort Wayne and Jackson Railroad Co.; thence along a curve to the right in a Southwesterly direction having a chord bearing of South 03 degrees 36 minutes 11 seconds East and a distance of 767.92 feet, an arc distance of 790.40 feet (having a radius of 951.94 feet) and being 32.00 feet West of and parallel to the centerline of said Railroad; thence South 20 degrees 11 minutes 00 seconds West 1064.97 feet 32.00 feet West of and parallel to the centerline of said Railroad to a point on the North line of Fourth Street; thence South 89 degrees 47 minutes 00 seconds West 136.23 feet along the North line of Fourth Street to the Point of Beginning, containing 12.29 acres, more or less.

PARCEL 8:

That portion of vacated Calhoun Street from the North Right-of-way line of Sixth Street to the North Right-of-way of Putnam Street, as vacated by Declaratory Resolution Number 1330-1973.

PARCEL 9:

A parcel of land situated in the City of Fort Wayne, County of Allen, State of Indiana in Section 2, Township 30 North, Range 12 East and Section 35, Township 31 North, Range 12 East and being a part of Lots Numbered 6 and 8 in Wells Reserve, more particularly described as follows, to-wit:

COMMENCING at the intersection of the North right-of-way line of Fourth Street and the East right-of-way line of Calhoun Street; thence North 89 degrees 42 minutes 24 seconds East (bearings in the description are based on an adjoining deed bearing of North 00 degrees 00 minutes 00 seconds East for the East right-of-way line of said Calhoun Street), on and along said North right-of-way line, a distance of 136.23 feet to the True Point of Beginning; thence North 20 degrees 11 minutes 00 seconds East, parallel with and 32.0 feet Northwesterly (measured at right angles) of the centerline of the mainline of the former Penn Central Railroad, a distance of 1132.69 feet (recorded 1064.97 feet) to the point of curvature of a regular curve to the left having a radius of 808.00 feet (951.94 feet recorded); thence Northwesterly and parallel with said Railroad centerline, on and along the arc of said curve, an arc distance of 731.59 feet (recorded 790.04 feet), being subtended by a long chord having a length of 706.86 feet and a bearing of North 05 degrees 45 minutes 20 seconds West; thence North 60 degrees 54 minutes 00 seconds East, not tangent to the last course, a distance of 82.08 feet to a point situated 50.0 feet Northeasterly of said railroad centerline; thence Southeasterly, on and along the arc of a curve to the right having a radius of 890.00 feet, an arc distance of 376.41 feet, being subtended by a long chord having a length of 373.61 feet and a

bearing of South 19 degrees 20 minutes 21 seconds East to the Northwesterly right-of-way line of North Clinton Street; thence South 00 degrees 43 minutes 21 seconds West, on and along said right-of-way line, a distance of 183.22 feet to the point of curvature of a regular curve to the right having a radius of 680.00 feet; thence Southwesterly, on and along the arc of said curve and along said right-of-way, an arc distance of 230.96 feet, being subtended by a long chord having a length of 229.85 feet and a bearing of South 10 degrees 27 minutes 10 seconds West to the point of tangency; thence South 20 degrees 11 minutes 00 seconds West, parallel with and 50.0 feet Southeasterly of said railroad centerline, a distance of 343.20 feet; thence South 00 degrees 07 minutes 19 seconds East, on and along said North Clinton Street right-of-way, a distance of 230.53 feet; thence South 20 degrees 11 minutes 00 seconds West and parallel with said railroad centerline, a distance of 523.15 feet (recorded 509.45 feet) to a point on the North right-of-way line of said Fourth Street; thence South 89 degrees 42 minutes 24 seconds West, on and along the North right-of-way of said Fourth Street, a distance of 172.93 feet to the Point of Beginning, containing 4.698 acres of land.

Excepting therefrom a tract of land conveyed to the State of Indiana, by Document Number 2011004101, described as follows:

A part of a parcel of land situated in the City of Fort Wayne, Allen County, Indiana, in Section 35, Township 31 North, Range 12 East and being part of Lot Number 8 in Wells Reserve, and being that part of the grantor's land lying within the right of way lines depicted on the attached Right of Way Parcel Plat, marked EXHIBIT "B" (attached to Document Number 2011004101), described as follows: COMMENCING at the intersection of the North right-of-way line for Fourth Street and the East right-of-way line of Calhoun Street; thence North 89 degrees 42 minutes 24 seconds East (bearings in the description are based on an adjoining deed bearing North 00 degrees 00 minutes 00 seconds East for the East right-of-way line of said Calhoun Street), on and along said North right-of-way line, a distance of 136.23 feet (the forgoing portion of this description beginning with the words "COMMENCING at the" is quoted from Instrument No. 202098622 in the Office of the Recorder of Allen County, Indiana); thence North 20 degrees 11 minutes 00 seconds East, parallel with and 32.00 feet Northwesterly (measured at right angles) of the centerline of the mainline of the former Penn Central Railroad, a distance of 1132.69 feet (recorded 1064.97 feet) to the point of curvature of a regular curve to the left having a radius of 808.00 feet (951.94 feet recorded) thence Northwesterly and parallel with said Railroad centerline, on and along the arc of said curve, an arc distance of 731.59 feet (recorded 790.04 feet), being subtended by a long chord having a length of 706.86 feet and a bearing of North 05 degrees 45 minutes 20 seconds West; thence North 60 degrees 54 minutes 00 seconds East, not tangent to the last course, a distance of 82.08 feet to a point situated 50.0 feet Northeasterly of said railroad centerline (the forgoing portion of this description beginning with the words "thence North 20 degrees" is quoted from Instrument No. 202098622 in the Office of the Recorder of Allen County, Indiana); thence Southeasterly 317.83 feet along an arc to the right and having a radius of 890.00 feet and subtended by a long chord having a bearing of South 22 degrees 47 minutes 49 seconds East and a length of 316.15 feet to the point of beginning of this description; thence Southeasterly 58.58 feet along an arc to the right and having a radius of 890.00 feet and being subtended by a long chord having a bearing of South 10 degrees 40 minutes 51 seconds East and a length of 58.57 feet; thence North 89 degrees 09 minutes 01 seconds East 25.00 feet to the centerline of U.S. 27 (North Clinton Street); thence South 00 degrees 50 minutes 59 seconds East, 72.41 feet along said centerline; thence South 89 degrees 09 minutes 01 seconds West 35.00 feet to point "301" designated on said Right of Way Parcel Plat; thence North 00 degrees 50 minutes 59 seconds West 130.12 feet to the point of beginning and containing 0.065 acres, more or less, inclusive of the presently existing right-of-way which contains 0.028 acres, more or less.

PARCEL 10:

A part of Lot Numbered 6 in Wells Reserve, Section 2, Township 30 North, Range 12 East, Allen County, Indiana, described as follows:

Commencing at the intersections of the North right of way line of Fourth Street and the East right of way line of North Calhoun Street; thence eastward along the North right of way of Fourth Street on an assumed bearing of North 89 degrees 47 minutes 00 seconds East 309.07 feet to the point of beginning; thence Eastward along the North right of way line of Fourth Street; North 89 degrees 47 minutes 00 seconds East 169.59 feet to a point on the West right of way of North Clinton Street; thence North 38 degrees 26 minutes 20 seconds East 19.08 feet along the West right of way of North Clinton Street; thence North 00 degrees 30 minutes 30 seconds West 462.60 feet along the West right of way of North Clinton Street, thence South 20 degrees 11 minutes 00 seconds West 509.45 feet to the point of beginning.

Containing 1.01 acres, more or less.

PARCELS 2, 3, 4, 5, 6, 7, 8, 9 and 10 being further described as follows:

A parcel of land situated in the City of Fort Wayne, County of Allen, State of Indiana in Section 2, Township 30 North, Range 12 East and Section 35, Township 31 North, Range 12 East and being a part of Lots Numbered 6 and 8 in Wells Reserve, and including Lots 28 through 40 and Block "A"

in St. Vincent's Place Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Plat Record 3, page 2 and that portion of vacated Putnam Street, as vacated by Declaratory Resolution 1331-1973 and that portion of vacated Calhoun Street, as vacated by Declaratory resolution Number 1330-1973, more particularly described as follows, to-wit:

Beginning at the intersection of the North right-of-way line of Fourth Street and the East right-of-way line of Calhoun Street; thence North 00 degrees 00 minutes 00 seconds East (deed bearing and is used as the basis for the bearings in this description), on and along said East right-of-way line, a distance of 700.35 feet to the North right-of-way line of Sixth Street; thence South 89 degrees 45 minutes 00 seconds West, on and along the North right-of-way line of Sixth Street, a distance of 300.00 to the East right-of-way line of North Harrison Street; thence North 00 degrees 13 minutes 49 seconds East, on and along the East right-of-way line of North Harrison Street, a distance of 742.92 feet to the North right-of-way line of Putnam Street; thence South 89 degrees 46 minutes 26 seconds East, on and along the North right-of-way line of Putnam Street and the South line of a 24.85 acre tract of land conveyed to Young Women's Christian Association by deed recorded in Document Number 79-23133 in the Office of the Recorder of Allen County, Indiana, a distance of 631.03 feet to an East corner of said 24.85 acre tract of land; thence North 18 degrees 33 minutes 42 seconds East, on and along the South line of said 24.85 acre tract, a distance of 336.52 feet (recorded 335.08 feet) to the most Easterly corner of said 24.85 acre tract of land; thence North 60 degrees 54 minutes 33 seconds East, a distance of 99.71 feet to a point situated 50.0 feet Northeasterly of the centerline of the mainline of the former Penn Central Railroad; thence Southeasterly, parallel with and 50.0 feet Northeasterly of said railroad centerline, on and along the arc of a curve to the right having a radius of 890.00 feet, an arc distance of 328.42 feet, being subtended by a long chord having a length of 326.56 feet and a bearing of South 20 degrees 52 minutes 29 seconds East to the Northwest corner of a 0.065 acre tract of land conveyed to the State of Indiana, by Document Number 2011004101; thence South 00 degrees 43 minutes 55 seconds West, on and along the West line of said 0.065 acre tract, 119.74 feet to the Southwest corner of said 0.065 acre tract; thence South 89 degrees 16 minutes 06 seconds East, on and along the South line of

said 0.065 acre tract, 7.91 feet to the Westerly right-of-way line of North Clinton Street; thence South 00 degrees 43 minutes 55 seconds West, on and along said right-of-way line, a distance of 110.81 feet to the point of curvature of a regular curve to the right having a radius of 680.00 feet; thence Southwesterly, on and along the arc of said curve and along said right-of-way, an arc distance of 230.96 feet, being subtended by a long chord having a length of 229.85 feet and a bearing of South 10 degrees 27 minutes 44 seconds West to the point of tangency; thence South 20 degrees 11 minutes 33 seconds West, parallel with and 50.0 feet Southeasterly of said railroad centerline, a distance of 343.20 feet; thence South 00 degrees 06 minutes 46 seconds East, on and along said North Clinton Street right-of-way, a distance of 705.96 feet; thence South 39 degrees 20 minutes 00 seconds West, on and along said North Clinton Street right-of-way, a distance of 19.08 feet to the North right-of-way of Fourth Street; thence South 89 degrees 42 minutes 57 seconds West, on and along said North right-of-way line, a distance of 478.75 feet to the point of beginning, containing 24.79 acres of land.

PARCEL 11:

All that parcel of land situated in the City of Fort Wayne, County of Allen, State of Indiana, being a part of Lot Numbered 6 in the plat of Wells Reserve, Section 2, Township 30 North, Range 12 East, bounded and described according to a plan of a survey made by Mid-Michigan Engineering and Survey Co. dated May 25, 1978, as follows, to-wit:

BEGINNING at the intersection of the South line of Fourth Street and the East line of Calhoun Street; thence North 89 degrees 46 minutes East, along the South line of Fourth Street a distance of 117.70 feet to a point 32 feet distant in a Northwesterly direction from the centerline of the main track formerly of the Fort Wayne and Jackson Railroad Company; thence South 20 degrees 10 minutes 30 seconds West; along a line parallel with said centerline of track a distance of 280.0 feet to a point; thence North 69 degrees 49 minutes 30 seconds West, a distance of 22.51 feet to a point in the east line of Calhoun Street; thence North along the East line of Calhoun Street a distance of 254.58 feet to the point of beginning.

CONTAINING 18,133.33 square feet more or less or 0.416 of an acre, more or less.

PARCEL 12:

All that piece or parcel of land situate, lying and being part of Lot No. 6 of Well's Reserve in Section 2, Township 30 North, Range 12 East, Allen County, Indiana, and being more particularly described as follows: to wit,

BEGINNING at the intersection of the southerly right of way line of Fourth Street and the westerly right of way line of North Clinton Street; thence, South 00°17'50" East (bearings in this description are based on a survey bearing of North 89°42'57" East, for the southerly right of way line of Fourth Street from Z. K. Tazian Associates, Inc. Survey No. 03-09-35), on and along the westerly right of way line of North Clinton Street as established by State Highway Project No. F.A.U:414(6), a distance of 60.00 feet to a 5/8-inch rebar set at the northeast corner of a 1.29-acre tract of land conveyed to Fort Wayne Board of Park Commissioners by deed recorded in Document No. 990094251 in the Office of the Recorder of Allen County, Indiana; thence, North 72°05'50" West, on and along the northerly line of said 1.29-acre tract of land, a distance of 90.00 feet to a 5/8-inch rebar set; thence, in a southwestwardly direction, on and along the northerly line of said 1.29-acre tract of land as defined by a curve to the left, not tangent to the last course, having a radius of 375.0 feet, an arc distance of 100.30 feet, being subtended by a long chord having a length of 100.00 feet and a bearing of South 70°50'30" West, to a 5/8-inch rebar set; thence, in a southwestwardly direction, on and along the northerly line of said 1.29-acre tract of land, as defined by a curve to the

left, having a radius of 350.0 feet, an arc distance of 100.35 feet, being subtended by a long chord having a length of 100.00 feet and a bearing of South 58 °15'30" West, to a 5/8-inch rebar set; thence, in a southwestwardly direction, on and along the northwesterly line of said 1.29-acre tract of land as defined by a curve to the left, having a radius of 600.0 feet, an arc distance of 100.12 feet, being subtended by a chord having a length of 100.00 feet and a bearing of South 45 °18'30" West to a 5/8-inch rebar set; thence, in a southwestwardly direction, on and along the northwesterly line of said 1.29-acre tract of land, as defined by a curve to the left, having a radius of 800.0 feet, an arc distance of 100.07 feet, being subtended by a long chord having length of 100.00 feet and a bearing of South 36 °05'30" West, to a 5/8-inch rebar set; thence, in a southwestwardly direction, on and along the northwesterly line of said 1.29-acre tract of land, as defined by a curve to the left, having a radius of 600.0 feet, an arc distance of 64.14 feet, being subtended by a long chord having a length of 64.11 feet and a bearing of South 27 °42'50" West, to a 5/8-inch rebar set at the most southerly corner of a Flood Protection Levee Easement (Exhibit "L") granted to the City of Fort Wayne by Document No. 200003397 in the Office of the Recorder of Allen County, Indiana; thence, North 61 °59'02" West, a distance of 9.80 feet to a 5/8-inch rebar set at the most westerly corner of said Easement; thence, South 21°15'27" West, a distance of 92.16 feet to a 5/8-inch rebar set at the northeast corner of an Access Road Easement (Exhibit "B") granted to the City of Fort Wayne by Document No. 200003397 in the Office of the Recorder of Allen County, Indiana; thence, South 23°00'20" West, on and along the easterly line of said Easement and the southwestly projection, a distance of 59.84 feet to a 5/8-inch rebar set on the southerly projection of the east right of way line of Calhoun Street; thence, North 00 °03'46" West, on and along said southerly projection and the east right of way line of Calhoun Street, a distance of 204.74 feet to a 5/8-inch rebar found at the southwest corner of a 0.416-acre tract of land conveyed to Calhoun Investments, LLC by deed recorded in Document No. 200071999 in the Office of the Recorder of Allen County, Indiana; thence, South 69°50'12" East, on and along the south line of said 0.416-acre tract of land, a distance of 22.51 feet to a 5/8-inch rebar found at the southeast corner thereof; thence, North 20 °06'51" East on and along the east line of said 0.416-acre tract of land, a distance of 280.00 feet to a 5/8-inch rebar found at the northeast corner thereof, this being a point on the southerly right of way line of Fourth Street; thence, North 89 °42'57" East, on and along said southerly right of way line, a distance of 372.90 feet to the point of beginning; said parcel containing 1.27 acres of land, more or less.

PARCEL 13:

Lots Numbered 202 and 203, in North Side Addition to the City of Fort Wayne, as recorded in Deed Record 104, pages 512-516, in the Office of the Recorder of Allen County, Indiana.

ALSO:

Lot Number 204, EXCEPT the West 25 feet 3 inches, in North Side Addition to the City of Fort Wayne, as recorded in Deed Record 104, pages 512-516, in the Office of the Recorder of Allen County, Indiana.

EXHIBIT B

ENVIRONMENTAL INDEMNIFICATION AGREEMENT

ENVIRONMENTAL INDEMNIFICATION AGREEMENT

This Environmental Indemnification Agreement (hereinafter "Agreement") made and entered into as of _____, 2017, by and between the City of Fort Wayne, Department of Redevelopment, by the Fort Wayne Redevelopment Commission, its successors and assigns ("Purchaser"), and Calhoun Investments, LLC, an Indiana limited liability company ("Seller").

RECITALS

- A. Concurrently herewith Seller is selling to Purchaser that certain real property located in the County of Allen, State of Indiana, more particularly described in Exhibit A, attached hereto (hereinafter "Property") pursuant to that certain Real Estate Purchase and Sale Agreement dated _____, 2017 (the "Purchase Agreement").
- B. Purchaser and Seller acknowledge and agree that certain contaminants (collectively, the "Contamination") may be present on the Property. As used herein, the term "Contamination" includes, without limitation, hazardous wastes or constituents, as defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.); hazardous substances, as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.); any pesticide (as defined in the Federal Insecticide Fungicide, and Rodenticide Act, as amended (7 U.S.C. Section 136, et seq.); or any hazardous or toxic chemical or extremely hazardous substance, as defined in Emergency Planning and Community Right-to-Know Act of 1986, as amended (42 U.S.C. Section 11001, et seq.) or any media contaminated with any hazardous material as defined above. The term "Contamination" shall also include, without limitation, volatile organic compounds, gasoline, diesel fuel, petroleum products, or the constituents or breakdown products of any of the foregoing, explosives, radioactive material, polychlorinated biphenyls or related or similar materials, asbestos or asbestos-containing materials or any other substance or material defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule or regulation.
- C. As of the date hereof, the source, extent or cause of any such Contamination is not known to Purchaser or Seller. Notwithstanding such uncertainty, the scope of the indemnity obligations established hereby is not limited to any particular location or level of concentration of Contamination.
- D. Purchaser has agreed to purchase the Property and Seller has agreed to sell the Property to Purchaser on the condition that Purchaser take complete responsibility for the remediation of any Contamination and indemnify Seller as set forth herein.
- E. Seller has required the execution and delivery of this Agreement as a condition precedent to Seller's obligation to sell the Property to Purchaser, and Seller would not be willing to sell the Property to Purchaser in the absence of the execution and delivery by Purchaser of this Agreement.

NOW, THEREFORE, for good and sufficient consideration, the receipt of which is hereby acknowledged, Purchaser agrees as follows:

AGREEMENT

- 1. Recitals. The recitals set forth above are true and correct and are by this reference incorporated herein.
- 2. Ongoing Investigation and Cooperation. Purchaser agrees to continue to monitor and investigate any Contamination in a manner consistent with protecting its interest in the Property and the indemnification of

Seller hereunder. Seller agrees to fully cooperate with such efforts, and covenants and agrees that it will promptly provide to Purchaser copies of any notices, demands, claims, inquiries, or any other correspondence received from any party relative to any Contamination.

3. Indemnification. Purchaser, on behalf of itself, its successors and assigns, agrees to indemnify, defend and hold Seller and its former and current members, managers, officers, employees and agents and North River Capital, LLC and all of its former and current affiliates, and each of their former and current members, shareholders, managers, directors, officers, employees and agents (the "Indemnified Parties") harmless from any claims (including without limitation third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), interest or losses, including reasonable attorneys' fees and expenses (including any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), consultant fees, and expert fees, together with all other costs and expenses of any kind or nature (collectively, the "Costs") that arise directly or indirectly from or in connection with any Contamination of, from, or affecting the Property. The indemnification provided herein shall be available to each of the Indemnified Parties regardless of (i) the legal theory of any claim, action or proceeding in which the Indemnified Party is named, including, but not limited to, claims, actions or proceedings based upon breach of statutory or regulatory obligations, negligence, recklessness, willful misconduct, intentional misconduct, contract (including claims for indemnification), contribution, equitable principles or any other theory; (ii) the capacity in which such Indemnified Party is named; and (iii) the nature of the person pursuing or otherwise a party to such claim, action or proceeding, with such indemnification to extend to claims, actions or proceedings pursued by or otherwise involving a former or then current Property owner or operator, a neighboring former or then current property owner or operator, a governmental entity, agency or organization or any other person.

4. Remedial Work. In the event any investigation or monitoring of site conditions or any cleanup, containment, restoration, removal or other remedial work (collectively the "Remedial Work") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity, or in order to comply with any agreements with any governmental authority in connection with any Contamination, Purchaser shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement; provided, that Purchaser may withhold such compliance pursuant to a good faith dispute regarding the application, interpretation or validity of the law, regulation, order, or agreement, subject to the requirements of paragraph 5 below. All costs and expenses of such Remedial Work shall be paid by Purchaser including, without limitation, the charges of contractor(s) and/or the consulting engineer.

5. Permitted Contests. Notwithstanding any provision of this Agreement to the contrary, Purchaser will be permitted to contest or cause to be contested, subject to compliance with the requirements of this paragraph, by appropriate action any Remedial Work requirement

6. Release. Purchaser, on behalf of itself and its successors and assigns, hereby releases the Indemnified Parties from any and all claims, demands, obligations, causes of action and liability arising out of or related to any Contamination (the "Release") of, from, or affecting the Property. Purchaser agrees never to commence, aid in any way or prosecute against the Indemnified Parties, any action, counterclaim or other proceeding based upon any claims, demands, causes of action, obligations, damages or liabilities covered by the Release.

7. Attorneys' Fees. In the event that either Party is named as a defendant party to any action, proceeding, controversy, claim or dispute concerning the Contamination, or concerning the enforcement of this instrument or the rights granted herein or obligations created hereby, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, costs and expenses from Purchaser.

8. Default Interest. Any Costs and other payments required to be paid by one Party to another Party under this Agreement which are not paid within one hundred twenty (120) business days of receipt of demand therefor shall thereupon be considered "Delinquent". In addition to all other rights and remedies of the unpaid Party against the other Party as provided herein, or under applicable law, the other Party shall pay to the unpaid Party Default Interest (as defined below) on any such payments which are or have become Delinquent. Default Interest shall be paid by the other Party from the date such payment becomes Delinquent through and including the date of

payment of such Delinquent sums. As used herein, "Default Interest" shall be equal to two percent (2%) per annum in excess of the prime rate published from time to time in The Wall Street Journal, but in any event no greater than the maximum rate of interest permitted to be contracted for by law.

9. Independent Obligations. The obligations of Purchaser under this Agreement have been undertaken by Purchaser in consideration for a reduction in the purchase price to be paid by Purchaser for the Property and are separate and distinct from other obligations which Purchaser may have to Seller which survive the transfer of title of the Property to Purchaser. This Agreement may be enforced by Seller without regard to any other rights and remedies Seller may have against Purchaser under any other agreement between Purchaser and Seller and without regard to any limitations on Seller's recourse under any such other agreement.

10. Miscellaneous. If any term of this Agreement or any application thereof shall be invalid, illegal or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby. No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right. This Agreement shall be binding upon Purchaser and its successors and assigns, and shall inure to the benefit of and be enforceable by Seller and its successors and assigns. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year first above written.

"PURCHASER"
CITY OF FORT WAYNE
BY THE REDEVELOPMENT COMMISSION
DEPARTMENT OF REDEVELOPMENT

By: _____

Printed Name: Greg Leatherman

Its: Executive Director

"SELLER"
CALHOUN INVESTMENTS, LLC,
an Indiana limited liability company

By: _____

Printed Name: _____

Its: _____