

BILL NO. R-19-05-19

RESOLUTION NO. _____

A Resolution concerning the granting of Options to Arts United of Greater Fort Wayne, Inc. to acquire two (2) parcels of real estate located In Freimann Square in the City of Fort Wayne, Indiana.

WHEREAS, the City of Fort Wayne, Indiana ("City") owns certain real estate located in the City commonly known as Freimann Square which is used as a public park; and

WHEREAS, Arts United of Greater Fort Wayne, Inc. ("AU") owns and operates the Arts United Center which serves as the home to the City's community theatre and arts programs on real estate adjacent to Freimann Square; and

WHEREAS, AU desires to renovate and expand the Arts United Center which expansion will require the acquisition of two (2) parcels of real estate located in Freimann Square; and

WHEREAS, AU has proposed that the City provide AU with the opportunity to acquire the two (2) parcels of real estate in Freimann Square by entering into the Option Agreement – Tract I and Option Agreement – Tract II (collectively, the "Option Agreements"), copies of which are attached hereto as Exhibits A and B, respectively; and

WHEREAS, because the City's Parks and Recreation Department ("Parks") manages, operates and maintains Freimann Square on behalf of the City, Park's approval of the conveyance of the two (2) parcels of real estate in Freimann Square is required pursuant to I.C. 36-10-4-9(8); and

1 **WHEREAS**, on May 9, 2019, the City of Fort Wayne Board of Park
2 Commissioners ("BPC ") approved the conveyance of the two (2) Parcels to AU
3 in accordance with the terms and provisions of the Option Agreements and has
4 recommended that the City approve and authorize the conveyance of said
5 parcels to AU pursuant to the terms and provisions of the Option Agreements;
6 and

7 **WHEREAS**, this Common Council has reviewed the proposal of AU to
8 acquire the two (2) parcels, has considered the recommendation of the BPC and
9 has determined that the conveyance of said parcels to AU would be in the best
10 interest of the citizens of the City of Fort Wayne;

11 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL**
12 **OF THE CITY OF FORT WAYNE, THAT:**

13 **Section 1.** The approvals and recommendations of the BPC described
14 herein are hereby approved, ratified and confirmed.

15
16 **Section 2.** The conveyance of the two (2) parcels to the AU in
17 accordance with the terms and provisions of the Option Agreements is hereby
18 approved and the Mayor is authorized to execute the Option Agreements on
19 behalf of the City.

20 **Section 3.** This Resolution shall be in full force and effect from and after
21 its passage and approval by the Fort Wayne Common Council and by the Mayor
22 of the City of Fort Wayne.

23 _____
 Council Member

24 APPROVED as to form and legality

25
26 
27 _____
 Carol Helton, City Attorney

DIGEST SHEET

TITLE OF RESOLUTION. A Resolution approving Option Agreements for the conveyance of a portion of real estate within Freimann Square to Arts United of Greater Fort Wayne, Inc.

DEPARTMENT REQUESTING RESOLUTION. Community Development

SYNOPSIS OF RESOLUTION. Approves two separate Option Agreements for two described areas of real estate located at the northern end of Freimann Square. The real estate that is subject to the Option Agreements is currently owned by the City of Fort Wayne and being operated by the Board of Park Commissioners.

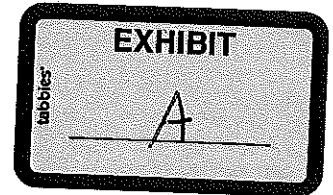
EFFECT OF PASSAGE. The executed Option Agreements provide a demonstrated pathway to ownership of real estate for Arts United which is necessary for the eventual construction of the Phase II and Phase III expansion of the Arts Campus. This documented pathway to ownership is necessary in order for them to responsibly complete feasibility studies and to implement a fundraising strategy for the completion of Phases II and III.

EFFECT OF NON-PASSAGE. Arts United will likely not be able to effectively implement a successful fundraising strategy without the executed Option Agreements and they will take on a greater degree of risk for expenses that will be necessary to complete feasibility and due diligence studies for the real estate.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). There are no costs to the City for the approval of the Option Agreements.

ASSIGNED TO COMMITTEE (PRESIDENT). _____

OPTION AGREEMENT – TRACT 1



THE CITY OF FORT WAYNE, INDIANA, an Indiana municipal corporation ("Owner"), whose principal address is 200 East Berry Street – Suite 430, Fort Wayne, Indiana 46802, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, grants and conveys to ARTS UNITED OF GREATER FORT WAYNE, INC., an Indiana non-profit corporation, whose principal address is 300 East Main Street, Fort Wayne, Indiana 46802, or its permitted successor or assign ("Purchaser"), the exclusive and irrevocable option (the "Option") to purchase the real estate located in Allen County, Indiana, which real estate is legally described on Exhibit A attached hereto and incorporated herein, including all easements, rights and appurtenances belonging or in any way pertaining thereto, (referred to herein as "Tract 1") for the purchase price of Five Hundred and 00/100 Dollars (\$500.00) (the "Purchase Price"). The Option shall be subject to the following terms and conditions of this Option Agreement – Parcel I ("Agreement"):

1. OPTION.

1.1 Initial Option. In consideration of the sum of One Hundred and 00/100 Dollars (\$100.00) paid and delivered by Purchaser to Seller concurrently with the signed Agreement, ("Initial Option Payment") and Purchaser's proposed construction of an expansion to the Arts United Center as conceptually depicted on Exhibit B attached hereto and incorporated herein, Seller grants, bargains and sells to Purchaser the exclusive option to purchase Tract 1 ("Option") which shall be exercised by Purchaser, on or before December 31, 2023, at 11:59 p.m. Eastern Standard Time (the "Initial Option Term"), at which time the Option shall expire unless extended in accordance with Section 1.2 hereof.

1.2 Extension of Option. In the event this Option is not exercised by Purchaser during the Initial Option Term, Purchaser may, at its sole election, extend the Initial Option Term to December 31, 2028 at 11:59 p.m. Eastern Standard Time, by notifying

Seller prior to Noon Eastern Standard Time on October 31, 2023, of Purchaser's intent to so extend the Initial Option Term and by delivering to Seller with such notice the sum of One Hundred and 00/100 Dollars (\$100.00) ("Additional Option Payment"). Unless exercised by Purchaser, the Option as extended shall expire on December 31, 2028, at 11:59 p.m. Eastern Standard Time.

1.3 Exercise. The Option shall be deemed exercised if Owner receives, at the address of Owner shown above, Purchaser's written notice of Purchaser's election to exercise the Option prior to the expiration of the Initial Option Term (or Additional Option Term). Upon Purchaser's exercise of the Option, Purchaser shall be deemed to have agreed to purchase Tract 1 on the terms and conditions contained herein. Purchaser shall exercise the Option prior to or contemporaneously with the exercise of the option to purchase Tract II granted to Purchaser by Owner under that certain Option to Purchase Real Estate – Tract II entered into between Owner and Purchaser on even date herewith. Contemporaneously with the exercise of the Option, Purchaser shall submit to Owner the following:

a. the Design Plans and Specifications for the improvements to be constructed on the Tract 1 (the "Project"), which shall have received the approval of Purchaser's Building Committee and Master Planning Committee, or similarly tasked committees of Purchaser, (which committees shall include in their respective memberships and include one (1) representative of Owner who shall have joined in the approval of the Design Plans and Specifications in accordance with committee procedures).

b. evidence of Purchaser's ability to finance, through pledges, financing or readily available funds, in its entirety the construction of the Project without restriction or condition. Acceptance of such evidence of financing by Owner shall be acceptable to Owner in its good faith discretion and shall be a condition to Owner's obligation to convey Tract 1 to Purchaser pursuant to the Option.

1.4 Closing. If the Option is exercised, the transaction shall close (the "Closing") on a business day no later than ninety (90) days following Purchaser's exercise of the Option (the "Closing Date") but in no event later than one hundred eighty (180) days after the date of Purchaser's written notice to Owner exercising the Option (the "Outside Closing Date"). Owner and Purchaser hereby agree that if the Option is exercised, each party will proceed with reasonable dispatch, and in good faith, to promptly conclude all matters precedent to Closing and to close the contemplated transaction. Absent a default by Owner, if the Closing does not occur by the Closing Date, this Agreement shall become void and of no further force and effect and Owner shall retain the Option Payment.

1.5 From and after the date of this Agreement Owner shall provide Purchaser with access to Tract 1 to conduct such inspections and testing as Purchaser deems necessary provided Purchaser shall:

a. provide Owner with reasonable written notice prior to conducting such inspections and testing; and

b. execute an Access and Indemnity Agreement which Owner requires as a condition to conducting such inspections and testing. Such inspections and testing shall be conducted in a manner which will cause a minimal amount of interruption with Owner's ongoing management and operation of Freimann Square and the surface parking lot located immediately north of Tract 1 and shall be conducted only following Owner's written consent to such inspection and testings.

1.6 Payment on Closing. At Closing, Purchaser shall pay in cash to Owner the Purchase Price and adjusted for any closing prorations described herein.

2. TERMS OF PURCHASE. If the Option is exercised, the following shall take place as provided below in contemplation of the Closing:

2.1 Within ten (10) days after a written request from Purchaser, Owner shall order for Purchaser a commitment for an owner's policy of title insurance (the "Commitment")

issued by a title insurance company reasonably satisfactory to Purchaser. Purchaser agrees that the following matters shall, collectively, be referred to herein as "Permitted Exceptions: (i) taxes and assessments not yet due and payable, (ii) liens of encumbrances of a definite or ascertainable amount which will be paid and discharged in full by Seller at or prior to the Closing, (iii) all zoning ordinances and easements of record affecting the Tract 1, and (iv) all other statutes, laws, regulations, ordinances and matters of record affecting Tract 1 and not objected to by Purchaser or otherwise waived pursuant to this Agreement. The cost of the Commitment and any title insurance policy obtained by Purchaser shall be at the expense of Purchaser, and any closing fee charged by the title insurance company shall be shared equally by Owner and Purchaser.

2.2 Owner has completed and shall provide to Purchaser prior to the execution of the Agreement a Boundary Survey and Legal Description of Tract 1, dated November 15, 2018. On or before Purchaser's exercise of the Option, Purchaser may at Purchaser's election order and procure, at the expense of Purchaser, a boundary survey of Tract 1 with all easements (including utility easements), available utility services, encroachments, rights-of-way and other matters (whether or not of record) pertaining to or affecting the Tract 1, and showing the location, area and dimensions of all improvements, easements, streets, roads, railroad spurs, flood hazard areas and alleys on or abutting said Tract 1, and providing a legal description of Tract 1 ("Survey"). Such Survey shall be dated or re-dated at a date not less than thirty (30) days prior to the Closing, and unless otherwise approved by Purchaser, shall (a) be made in accordance with the "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys," established and adopted jointly by the American Land Title Association and the National Society of Professional Surveyors in 2016, and (b) contain such Table A items as deemed necessary by Purchaser.

2.3 Within the later of thirty (30) days prior to Closing or ten (10) days after receipt of (i) the Commitment, and (ii) all instruments and documents, if any, referenced in the Commitment as special exceptions, Purchaser shall give Owner written notice of any special exceptions enumerated in the Commitment which are unacceptable to Purchaser in its reasonable discretion. Owner will, within ten (10) days after receipt of that notice,

attempt to have such Special Exceptions removed or insured over by the title insurance company. If Owner is unable or unwilling to do so, then Purchaser shall either (a) terminate this Agreement by written notice to Owner within five (5) days after Owner's ten (10) day response period, in which case all obligations and liabilities of the parties hereunder shall cease and the Option Payment shall be returned to Purchaser, or (b) Purchaser will be deemed to have waived such matters and elected to proceed with the transaction without adjustment to the Purchase Price or any other change hereto. In the event Purchaser does not terminate this Agreement pursuant hereto, all matters of title that are not cured by Owner pursuant hereto shall be deemed Permitted Exceptions.

2.4 Owner and Purchaser agree to deliver to the other each of the documents, instruments or things herein specified to be delivered to the other or into Closing on or before the time provided in this Agreement with respect thereto.

2.5 It is a condition precedent to Purchaser's obligation to close the transaction contemplated herein that the representations and warranties of Owner under Section 4 hereof shall be true and correct in all material respects as of the Closing date as if made on such Closing Date.

2.6 Purchaser shall execute a Warranty Deed , Closing Affidavit, Sales Disclosure, Statement and Release reconveying title to the Parcel to Owner and deliver the same to Owner at Closing to be held in escrow by Owner's Department of Redevelopment. In the event Purchaser has not been issued an Improvement Location Permit by the Department of Planning Services for the construction of the Project and (b) is not substantially engaged in the construction of the Project prior to the expiration of twenty-four (24) months following the date of Closing, Owner may record the Purchaser's Warranty Deed revesting title to Tract 1 in the Seller. Purchaser shall not cause or permit any mortgages or liens to be placed on the Tract 1 prior to the date of issuance of the Improvement Location Permit by the Department of Planning Services.

3. TAXES AND ASSESSMENTS. Purchaser assumes and agrees to pay all assessments for improvements and all real estate taxes if any, due and payable with respect to Tract 1 which become due after the date of Closing.

4. OWNER'S WARRANTIES AND REPRESENTATIONS. Owner warrants and represents to Purchaser that the following statements are true and correct in all material respects as of the date hereof, and shall be true and correct in all material respects on the date of Closing:

4.1 Owner is a municipal corporation duly organized and validly existing under the laws of the State of Indiana.

4.2 Owner has full right, power and authority to: execute and deliver this Option; consummate the transactions contemplated herein; to comply with and fulfill the terms and conditions hereof; and to sell, transfer, convey and assign Tract 1 to Purchaser as provided herein.

Other than for any claim of a breach by Owner of its express representations and warranties given pursuant to this Section 4 and Section 7.1, Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights Purchaser might have regarding any form of warranty, express or implied or arising by operation of law, including, but in no way limited to any warranty of quantity, quality, condition, habitability, merchantability, suitability or fitness for a particular purpose relating to the Tract 1, its improvements or the property conditions, such waiver being absolute, complete, total and unlimited in any way. Purchaser acknowledges, except as expressly set forth herein, that the sale of Tract 1 is "AS-IS, WHERE IS, WITH ALL FAULTS". Purchaser further acknowledges that Owner has advised Purchaser to consult with its own professionals and experts with experience in evaluating the condition of Tract 1, including, without limitation, regarding the presence of hazardous or toxic substances and that Purchaser will be relying solely on its own investigation of Tract 1 and not on any

information provided or to be provided by Owner. The terms and conditions of this Section 4 shall expressly survive the Closing and shall not merge with the provisions of any closing documents. Purchaser further acknowledges and agrees that the provisions of this Section are a material factor in determining the Purchase Price.

Any and all information related to Tract 1 and provided to Purchaser by Owner (without implying any obligation to deliver such information, however) ("Information"), shall be delivered as an accommodation to Purchaser only, without any representation or warranty as to the completeness or accuracy of the data or other information contained therein, and all such Information is furnished to Purchaser solely as a courtesy, and Owner has neither verified the accuracy of any statements or other information therein contained, the method used to compile such Information nor the qualifications of the persons preparing such Information. The Information is provided on an AS IS, WHERE IS basis, and Purchaser expressly acknowledges that, in consideration of the agreements of Owner herein, Owner makes no representation, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of quantity, quality, condition, merchantability, suitability or fitness for a particular purpose as to the Information.

Without limitation, to the fullest extent permitted by law, other than for any claim of a breach by Owner of its express representations and warranties given pursuant to this Section 4, Purchaser, for itself and for Purchaser's successors and assigns, hereby releases Owner from and waives any and all claims and liabilities against Owner for, related to or in connection with any environmental condition affecting Tract 1 (or the presence of any matter or substance relating to the environmental condition of the Tract 1), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances located in, at, about or under Tract 1, or for any and all claims or causes of action (actual or threatened) based upon, in connection with or arising out of: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601 et seq.) ("CERCLA"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.) ("RCRA"); (iii) the

Superfund Amendments and Reauthorization Act (42 U.S.C. §§9601 et seq.) ("SARA"); or (iv) any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action) related to environmental matters or liability with respect to or affecting Tract 1. This Section 4 shall survive the Closing.

5. Purchaser's Covenants and Warranties. Purchaser covenants, warrants to Owner that the following statements are true and correct in all material respects as of the date hereof and the same shall survive the Closing:

(a) Purchaser is a duly organized and validly existing *Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that are exempt from federal income taxation under Section 501 of the Internal Revenue Code as required under IC 36-1-11-1 (b)(7) and will be exempt at closing.*

(b) The person executing this Agreement on behalf of Purchaser has been duly authorized and has the full right and authority to enter into this Agreement on behalf of Purchaser. The execution and delivery by Purchaser of, and performance and compliance by Purchaser with, the terms and provisions of this Agreement do not violate any term, condition or provision of (i) Purchaser's organizational documents; (ii) any judgement, order, decree, regulation or ruling of any court or other government authority to which Purchaser is subject; or (iii) any agreement or contract to which Purchaser is a party or is bound. No consent, waiver, or approval by any third party which has not already been received is required in connection with the execution, delivery and performance by Purchaser of this Agreement.

6. Proration of Real Estate Taxes. Owner is a municipal corporation and pays no real property taxes in relation to Tract 1, thus no proration of taxes at Closing is necessary. Buyer shall be solely responsible for the payment of any real property taxes and special assessments imposed on Tract 1, if any, from the Closing Date and thereafter.

7. CLOSING DOCUMENTS AND POSSESSION.

7.1 At the Closing, Owner shall execute and deliver to Purchaser:

- (a) A special warranty deed by Owner entity conveying Tract 1 to Purchaser, subject only to the Permitted Exceptions, warranting title to Tract 1 against all claiming by, under or through Seller;
- (b) An Owner's Affidavit provided by the title insurance company, in form reasonably acceptable to Owner, with respect to potential mechanics' liens caused by or at the request of Owner;
- (c) A Certification of Non-Foreign Status with respect to Owner as required by Section 1445 of the Internal Revenue Code; and
- (d) Such other documents as the title insurer may reasonably deem necessary to consummate the transaction contemplated hereunder to the extent reasonably acceptable to Owner.

7.2 The Purchase Price shall be delivered to Owner at Closing in immediately available funds, and possession of Tract 1 shall be delivered to Purchaser at Closing, subject to the Permitted Exceptions.

7.3 Except as otherwise expressly set forth in this Agreement to the contrary, all costs and expenses of Closing shall be the responsibility of Purchaser.

8. SUCCESSORS AND ASSIGNS. The terms and conditions contained herein are to apply to and bind the heirs, executors, administrators, successors and assigns of Owner and Purchaser. Notwithstanding the foregoing sentence, (i) Purchaser may not assign this Agreement without the prior written consent of Owner, which consent may be withheld by Owner in its sole discretion (provided however Owner may not unreasonably withhold, condition or delay approval of an assignment to an affiliated entity with a majority of

individuals then serving on its board of directors who also then serve on the board of directors of Purchaser), and (ii) any conveyance or assignment by Owner of any of Owner's interests in Tract 1 shall expressly provide that such conveyance or assignment is subject in all respects to the terms and provisions of this Agreement. Any permitted conveyance or assignment hereunder shall not relieve the conveying or assigning party from liability hereunder.

9. BROKER'S FEES. Owner and Purchaser represent and warrant to each other that neither they nor their respective employees or agents have dealt with or consulted with any real estate broker, salesman or finder in connection with the transaction contemplated by this agreement, and each agrees to indemnify, defend and hold the other harmless against any claim or demand made by any other real estate broker, salesman or finder claiming to have dealt or consulted with the respective Owner or Purchaser or their representatives, employees, or agents contrary to the foregoing representation and warranty.

10. DEFAULT BY OWNER; SPECIFIC PERFORMANCE. In the event Purchaser exercises the Option and Owner fails to perform Owner's obligations hereunder after written notice and a failure to cure the same, as Purchaser's sole and exclusive remedy, Purchaser may either (a) require that the Option Payment shall be immediately returned to Purchaser and this Agreement be terminated; or (b) enforce specific performance to close the contemplated transaction (provided, however, that Purchaser must file an action to specifically enforce this agreement within sixty (60) days after the original Closing date or will be deemed to have waived such remedy).

11. ATTORNEYS' FEES; GOVERNING LAW; VENUE. Either party hereto which prevails in any legal or equitable proceeding against the other party in a matter brought under or relating to this agreement or the transaction contemplated hereby shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party. The governing law for any dispute hereunder or in connection with the conveyance of Tract 1

as contemplated herein shall be Indiana law, with venue for any claim hereunder being Allen County, Indiana. The parties hereto specifically waive the right to a jury trial.

12. Miscellaneous.

(a) Survival of Agreement. The representations, warranties and covenants of Owner and Purchaser contained in this Agreement or in any other document executed by Owner or Purchaser to effect the intended transaction, shall survive the Closing and shall remain in full force and effect at all times.

(b) Agreement Binding. This Agreement shall be binding upon and shall inure to the benefit of the Owner and Purchaser and their respective successors and assigns.

(c) Headings and Captions. The several headings and captions of the Sections and Subsections used in this Agreement are for convenience or reference only and shall, in no way, be deemed to limit, define or restrict the substantive provisions of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement of Purchaser and Owner with respect to the purchase and sale of the Tract 1 superseding any prior or contemporaneous agreement with respect thereto. No amendment or modification of this Agreement shall be binding upon the parties unless made in writing and signed by both Owner and Purchaser.

(e) Cooperation. Purchaser and Owner shall cooperate fully with each other to carry out and effectuate the purchase and sale of Tract 1 in accordance with this Agreement. Wherever the approvals of Purchaser or Owner are required, such approvals shall not unreasonably be withheld, conditioned or delayed.

(f) Governing Law. This Agreement and the rights of the parties shall

be governed by and construed in accordance with the laws of the State of Indiana.

(g) Counterparts. Facsimile or emailed signatures shall be deemed an original and this Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) Recording. This Agreement shall not be recorded but the parties agree to execute, acknowledge and record the Memorandum of Option Agreement – Tract 1 in substantially the form attached hereto as Exhibit C.

13. COUNTERPARTS. This instrument may be executed in separate counterparts and exchanged electronically, each of which when so executed and exchanged shall be deemed an original, but all of such counterparts shall together constitute but one and the same instrument.

[The remainder of this page is intentionally left blank. See following page for signatures.]

IN WITNESS WHEREOF, all of the parties have executed this instrument as of the
____ day of _____, 2019 (the "Effective Date").

OWNER:

CITY OF FORT WAYNE, INDIANA

By: _____

Printed Name: _____

Title: _____

PURCHASER:

ARTS UNITED OF GREATER FORT WAYNE, INC.,
An Indiana non-profit corporation

By: _____

Printed Name: _____

Title: _____

Exhibit A

Legal Description of Real Estate ("Tract 1")

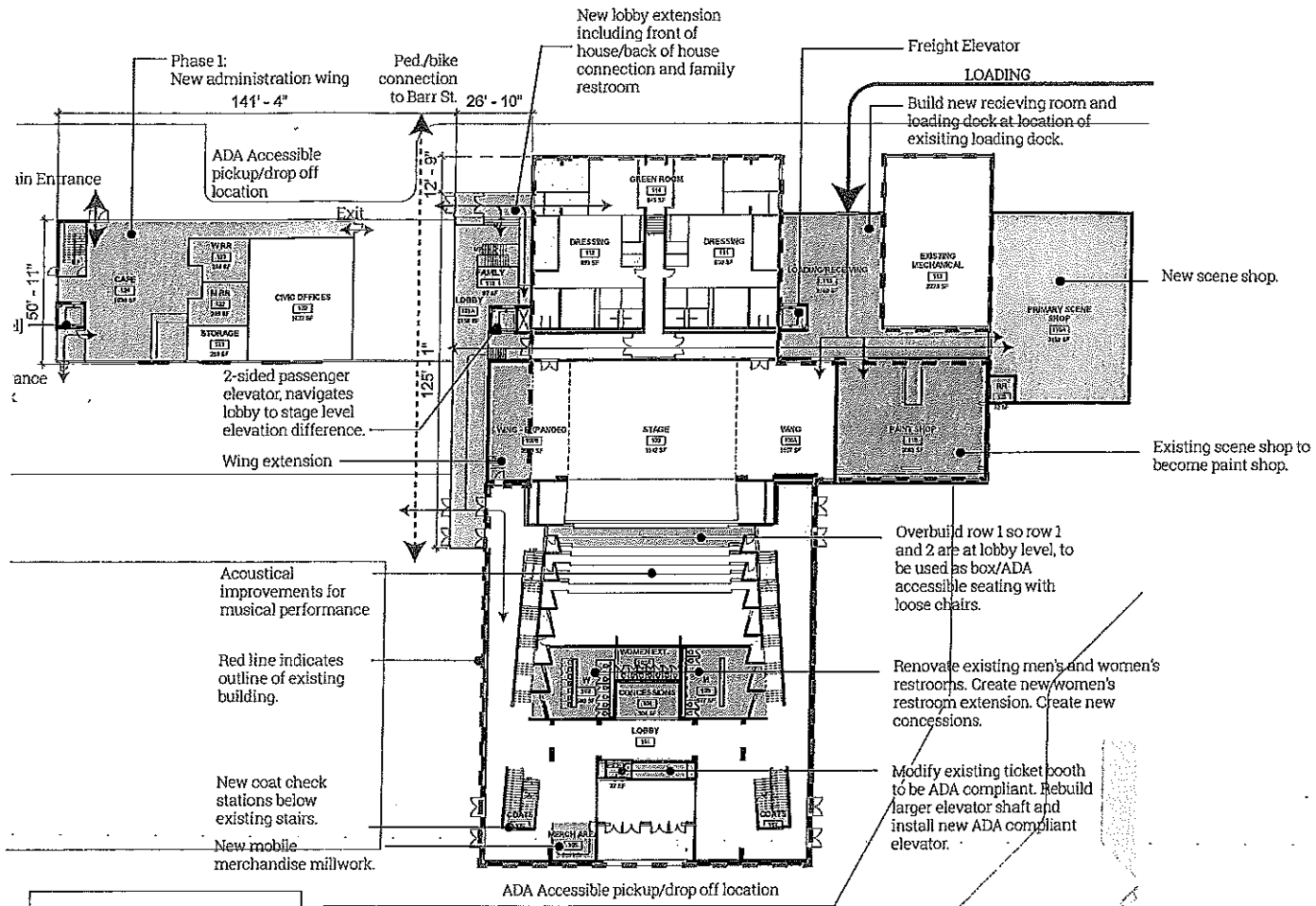
Tract 1 – 0.312 Acres

A part of the vacated Original Plat of Fort Wayne to the City of Fort Wayne, Indiana, as shown in the Office of the Recorder of Allen County, Indiana, more particularly described as follows:

Commencing at the intersection of Clinton Street and Superior Street, said point being point number 600 on a VS Engineering, Inc. survey completed on May 28, 2014 as Survey Number 1172175; thence North 78 degrees 08 minutes 34 seconds East (VS Engineering, Inc. Survey bearing and basis of bearings to follow), a distance of 428.02 feet along the centerline of Superior Street to the centerline of Barr Street; thence South 12 degrees 02 minutes 30 seconds East, a distance of 305.59 feet along the centerline of Barr Street and along the centerline of a vacated portion of Barr Street to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set at the POINT OF BEGINNING of the herein described tract; thence continuing South 12 degrees 00 minutes 30 seconds East, a distance of 95.00 feet along said centerline to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set; thence South 77 degrees 59 minutes 30 seconds West, a distance of 145.00 feet to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set; thence North 12 degrees 00 minutes 30 seconds West, a distance of 95.00 feet parallel with said centerline to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set; thence North 77 degrees 59 minutes 30 seconds East, a distance of 145.00 feet to the Point of Beginning. Containing 0.312 acres, more or less. Subject to easements of record.

Exhibit B

Conceptual Description of Arts United Center expansion on Tract 1



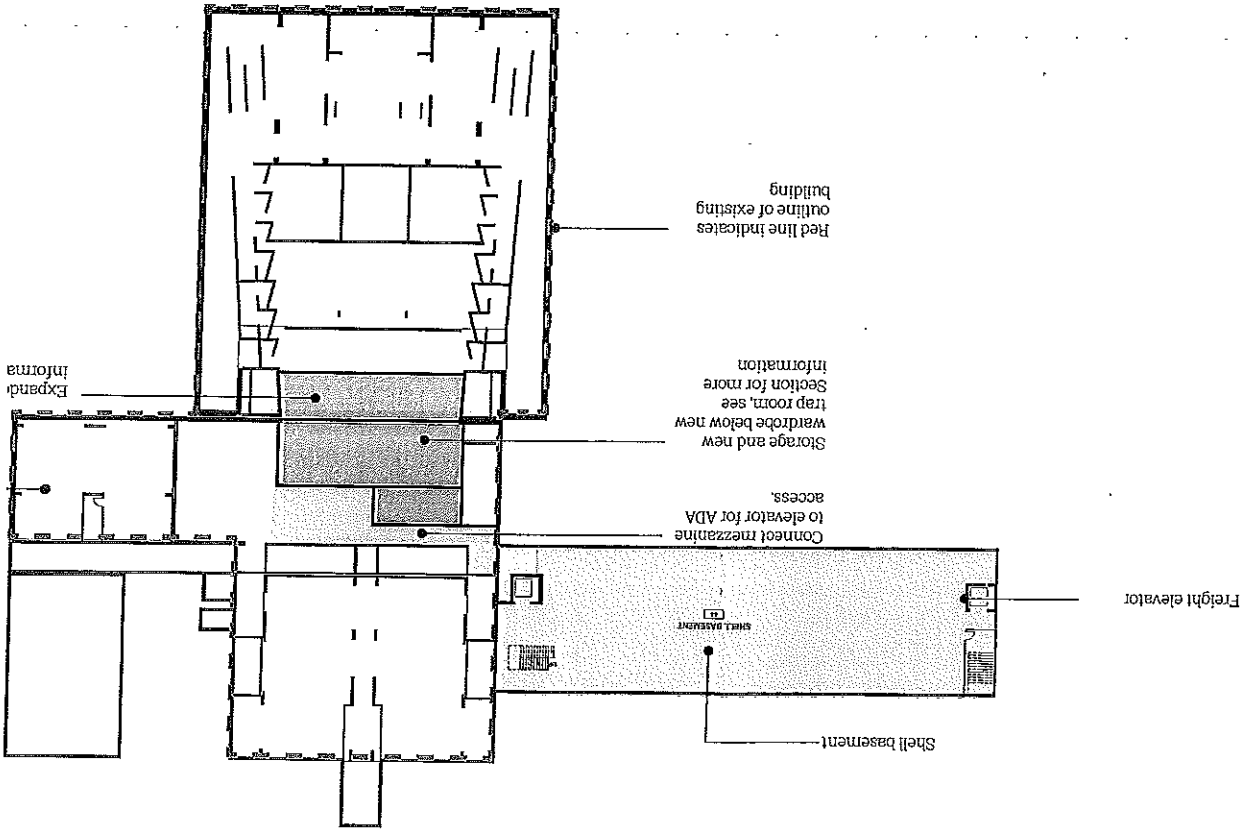


Exhibit C

(Memorandum of Option Agreement – Tract 1)

MEMORANDUM OF OPTION AGREEMENT – TRACT I

THIS MEMORANDUM OF OPTION AGREEMENT – TRACT I is made and entered into on _____ by and between the City of Fort Wayne, Indiana, as Owner, and Arts United of Greater Fort Wayne, Inc., as Purchaser. Owner and Purchaser have entered into an Option Agreement – Tract I, dated of even date herewith, the terms and conditions of which are made a part of this Memorandum of Option Agreement – Tract I as though fully set forth herein, wherein Owner has granted Purchaser an option to purchase certain premises in the County of Allen, State of Indiana, described in Exhibit A attached hereto.

EXECUTED on _____

OWNER:

CITY OF FORT WAYNE, INDIANA

By: _____

Printed Name: _____

Title: _____

PURCHASER:

ARTS UNITED OF GREATER FORT WAYNE, INC.,
An Indiana non-profit corporation

By: _____

Printed Name: _____

Title: _____

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF INDIANA)
COUNTY OF ALLEN)

On _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas F. Henry, as Mayor of the City of Fort Wayne, Indiana, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument of the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Indiana that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of notary _____ (Seal)

Resident of Allen County, Indiana

STATE OF INDIANA)
COUNTY OF ALLEN)

On _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Susan Mendenhall, President of Arts United of Greater Fort Wayne, Inc., whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument of the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Indiana that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

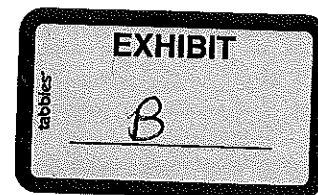
Signature of notary _____ (Seal)

Resident of Allen County, Indiana

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Lawrence Shine.

This instrument prepared by Lawrence E. Shine, Associate City Attorney, City of Fort Wayne, 200 East Berry Street, Suite 430, Fort Wayne, Indiana 46802

OPTION AGREEMENT – TRACT II



THE CITY OF FORT WAYNE, INDIANA, an Indiana municipal corporation (“Owner”), whose principal address is 200 East Berry Street – Suite 430, Fort Wayne, Indiana 46802, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, grants and conveys to ARTS UNITED OF GREATER FORT WAYNE, INC., an Indiana non-profit corporation, whose principal address is 300 East Main Street, Fort Wayne, Indiana 46802, or its permitted successor or assign (“Purchaser”), the exclusive and irrevocable option (the “Option”) to purchase the real estate located in Allen County, Indiana, which real estate is legally described on Exhibit A attached hereto and incorporated herein, including all easements, rights and appurtenances belonging or in any way pertaining thereto, (referred to herein as “Tract II) for the purchase price of Five Hundred and 00/100 Dollars (\$500.00) (the “Purchase Price”). The Option shall be subject to the following terms and conditions of this Option Agreement – Tract II (“Agreement”):

1. OPTION.

1.1 Initial Option. In consideration of the sum of One Hundred and 00/100 Dollars (\$100.00) paid and delivered by Purchaser to Seller concurrently with the signed Agreement, (“Initial Option Payment”) and Purchaser’s proposed construction of an expansion to the Arts United Center as conceptually depicted on Exhibit B attached hereto and incorporated herein, Seller grants, bargains and sells to Purchaser the exclusive option to purchase Tract II (“Option”) which shall be exercised by Purchaser, on or before December 31, 2028, at 11:59 p.m. Eastern Standard Time (the “Initial Option Term”), at which time the Option shall expire unless extended in accordance with Section 1.2 hereof.

1.2 Extension of Option. In the event this Option is not exercised by Purchaser during the Initial Option Term, Purchaser may, at its sole election, extend the Initial Option Term to December 31, 2029 at 11:59 p.m. Eastern Standard Time, by notifying Seller prior to Noon Eastern Standard Time on October 31, 2028, of Purchaser’s intent to so extend the Initial Option

Term and by delivering to Seller with such notice the sum of One Hundred and 00/100 Dollars (\$100.00) ("Additional Option Payment"). Unless exercised by Purchaser, the Option as extended shall expire on December 31, 2029, at 11:59 p.m. Eastern Standard Time.

1.3 Exercise. The Option shall be deemed exercised if Owner receives, at the address of Owner shown above, Purchaser's written notice of Purchaser's election to exercise the Option prior to the expiration of the Initial Option Term (or Additional Option Term). Upon Purchaser's exercise of the Option, Purchaser shall be deemed to have agreed to purchase Tract II on the terms and conditions contained herein. Purchaser shall exercise the Option contemporaneously with or subsequent to the exercise of the option to purchase Tract I granted to Purchaser by Owner under that certain Option to Purchase Real Estate – Tract I entered into between Owner and Purchaser on even date herewith. Contemporaneously with the exercise of the Option, Purchaser shall submit to Owner the following:

a. the Design Plans and Specifications for the improvements to be constructed on the Tract II (the "Project"), which shall have received the approval of Purchaser's Building Committee and Master Planning Committee, or similarly tasked committees of Purchaser, (which committees shall include in their respective memberships and include one (1) representative of Owner who shall have joined in the approval of the Design Plans and Specifications in accordance with committee procedures).

b. evidence of Purchaser's ability to finance, through pledges, financing or readily available funds, in its entirety the construction of the Project without restriction or condition. Acceptance of such evidence of financing by Owner shall be acceptable to Owner in its good faith discretion and shall be a condition to Owner's obligation to convey Tract II to Purchaser pursuant to the Option.

1.4 Closing. If the Option is exercised, the transaction shall close (the "Closing") on a business day no later than ninety (90) days following Purchaser's exercise of the Option (the "Closing Date") but in no event later than one hundred eighty (180) days after the date of Purchaser's written notice to Owner exercising the Option (the "Outside Closing Date"). Owner and Purchaser hereby agree

that if the Option is exercised, each party will proceed with reasonable dispatch, and in good faith, to promptly conclude all matters precedent to Closing and to close the contemplated transaction. Absent a default by Owner, if the Closing does not occur by the Closing Date, this Agreement shall become void and of no further force and effect and Owner shall retain the Option Payment.

1.5 From and after the date of this Agreement Owner shall provide Purchaser with access to Tract II to conduct such inspections and testing as Purchaser deems necessary provided Purchaser shall:

a. provide Owner with reasonable written notice prior to conducting such inspections and testing; and

b. execute an Access and Indemnity Agreement which Owner requires as a condition to conducting such inspections and testing. Such inspections and testing shall be conducted in a manner which will cause a minimal amount of interruption with Owner's ongoing management and operation of Freimann Square and the surface parking lot located immediately north of Tract II and shall be conducted only following Owner's written consent to such inspection and testings.

1.6 Payment on Closing. At Closing, Purchaser shall pay in cash to Owner the Purchase Price and adjusted for any closing prorations described herein.

2. TERMS OF PURCHASE. If the Option is exercised, the following shall take place as provided below in contemplation of the Closing:

2.1 Within ten (10) days after a written request from Purchaser, Owner shall order for Purchaser a commitment for an owner's policy of title insurance (the "Commitment") issued by a title insurance company reasonably satisfactory to Purchaser. Purchaser agrees that the following matters shall, collectively, be referred to herein as "Permitted Exceptions: (i) taxes and assessments not yet due and payable, (ii) liens of encumbrances of a definite or ascertainable amount which will be paid and discharged in full by Seller at or prior to the Closing, (iii) all zoning ordinances and easements of record affecting the Tract II, and (iv) all other statutes, laws, regulations, ordinances and matters of record affecting Tract II and not objected to by Purchaser or otherwise waived

pursuant to this Agreement. The cost of the Commitment and any title insurance policy obtained by Purchaser shall be at the expense of Purchaser, and any closing fee charged by the title insurance company shall be shared equally by Owner and Purchaser.

2.2 Owner has completed and shall provide to Purchaser prior to the execution of the Agreement a Boundary Survey and Legal Description of Tract II, dated November 15, 2018. On or before Purchaser's exercise of the Option, Purchaser may at Purchaser's election order and procure, at the expense of Purchaser, a boundary survey of Tract II with all easements (including utility easements), available utility services, encroachments, rights-of-way and other matters (whether or not of record) pertaining to or affecting the Tract II, and showing the location, area and dimensions of all improvements, easements, streets, roads, railroad spurs, flood hazard areas and alleys on or abutting said Tract II, and providing a legal description of Tract II ("Survey"). Such Survey shall be dated or re-dated at a date not less than thirty (30) days prior to the Closing, and unless otherwise approved by Purchaser, shall (a) be made in accordance with the "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys," established and adopted jointly by the American Land Title Association and the National Society of Professional Surveyors in 2016, and (b) contain such Table A items as deemed necessary by Purchaser.

2.3 Within the later of thirty (30) days prior to Closing or ten (10) days after receipt of (i) the Commitment, and (ii) all instruments and documents, if any, referenced in the Commitment as special exceptions, Purchaser shall give Owner written notice of any special exceptions enumerated in the Commitment which are unacceptable to Purchaser in its reasonable discretion. Owner will, within ten (10) days after receipt of that notice, attempt to have such Special Exceptions removed or insured over by the title insurance company. If Owner is unable or unwilling to do so, then Purchaser shall either (a) terminate this Agreement by written notice to Owner within five (5) days after Owner's ten (10) day response period, in which case all obligations and liabilities of the parties hereunder shall cease and the Option Payment shall be returned to Purchaser, or (b) Purchaser will be deemed to have waived such matters and elected to proceed with the transaction without adjustment to the Purchase Price or any other change hereto. In the event Purchaser does not

terminate this Agreement pursuant hereto, all matters of title that are not cured by Owner pursuant hereto shall be deemed Permitted Exceptions.

2.4 Owner and Purchaser agree to deliver to the other each of the documents, instruments or things herein specified to be delivered to the other or into Closing on or before the time provided in this Agreement with respect thereto.

2.5 It is a condition precedent to Purchaser's obligation to close the transaction contemplated herein that the representations and warranties of Owner under Section 4 hereof shall be true and correct in all material respects as of the Closing date as if made on such Closing Date.

2.6 Purchaser shall execute a Warranty Deed , Closing Affidavit, Sales Disclosure, Statement and Release reconveying title to the Parcel to Owner and deliver the same to Owner at Closing to be held in escrow by Owner's Department of Redevelopment. In the event Purchaser has not been issued an Improvement Location Permit by the Department of Planning Services for the construction of the Project and (b) is not substantially engaged in the construction of the Project prior to the expiration of twenty-four (24) months following the date of Closing, Owner may record the Purchaser's Warranty Deed revesting title to Tract II in the Seller. Purchaser shall not cause or permit any mortgages or liens to be placed on the Tract II prior to the date of issuance of the Improvement Location Permit by the Department of Planning Services.

3. TAXES AND ASSESSMENTS. Purchaser assumes and agrees to pay all assessments for improvements and all real estate taxes if any, due and payable with respect to Tract II which become due after the date of Closing.

4. OWNER'S WARRANTIES AND REPRESENTATIONS. Owner warrants and represents to Purchaser that the following statements are true and correct in all material respects as of the date hereof, and shall be true and correct in all material respects on the date of Closing:

4.1 Owner is a municipal corporation duly organized and validly existing under the laws of the State of Indiana.

4.2 Owner has full right, power and authority to: execute and deliver this Option; consummate the transactions contemplated herein; to comply with and fulfill the terms and conditions hereof; and to sell, transfer, convey and assign Tract II to Purchaser as provided herein.

Other than for any claim of a breach by Owner of its express representations and warranties given pursuant to this Section 4 and Section 7.1, Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights Purchaser might have regarding any form of warranty, express or implied or arising by operation of law, including, but in no way limited to any warranty of quantity, quality, condition, habitability, merchantability, suitability or fitness for a particular purpose relating to Tract II, its improvements or the property conditions, such waiver being absolute, complete, total and unlimited in any way. Purchaser acknowledges, except as expressly set forth herein, that the sale of Tract II is "AS-IS, WHERE IS, WITH ALL FAULTS". Purchaser further acknowledges that Owner has advised Purchaser to consult with its own professionals and experts with experience in evaluating the condition of Tract II, including, without limitation, regarding the presence of hazardous or toxic substances and that Purchaser will be relying solely on its own investigation of Tract II and not on any information provided or to be provided by Owner. The terms and conditions of this Section 4 shall expressly survive the Closing and shall not merge with the provisions of any closing documents. Purchaser further acknowledges and agrees that the provisions of this Section are a material factor in determining the Purchase Price.

Any and all information related to Tract II and provided to Purchaser by Owner (without implying any obligation to deliver such information, however) ("Information"), shall be delivered as an accommodation to Purchaser only, without any representation or warranty as to the completeness or accuracy of the data or other information contained therein, and all such Information is furnished to Purchaser solely as a courtesy, and Owner has neither verified the accuracy of any statements or other information therein contained, the method used to compile such Information nor the qualifications of the persons preparing such Information. The Information is provided on an AS IS,

WHERE IS basis, and Purchaser expressly acknowledges that, in consideration of the agreements of Owner herein, Owner makes no representation, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of quantity, quality, condition, merchantability, suitability or fitness for a particular purpose as to the Information.

Without limitation, to the fullest extent permitted by law, other than for any claim of a breach by Owner of its express representations and warranties given pursuant to this Section 4, Purchaser, for itself and for Purchaser's successors and assigns, hereby releases Owner from and waives any and all claims and liabilities against Owner for, related to or in connection with any environmental condition affecting Tract II (or the presence of any matter or substance relating to the environmental condition of the Tract II), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances located in, at, about or under Tract II, or for any and all claims or causes of action (actual or threatened) based upon, in connection with or arising out of: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601 et seq.) ("CERCLA"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.) ("RCRA"); (iii) the Superfund Amendments and Reauthorization Act (42 U.S.C. §§9601 et seq.) ("SARA"); or (iv) any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action) related to environmental matters or liability with respect to or affecting Tract II. This Section 4 shall survive the Closing.

5. Purchaser's Covenants and Warranties. Purchaser covenants, warrants to Owner that the following statements are true and correct in all material respects as of the date hereof and the same shall survive the Closing:

(a) Purchaser is a duly organized and validly existing *Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that are exempt from federal income taxation under Section 501 of the Internal Revenue Code as required under IC 36-1-11-1 (b)(7) and will be exempt at closing.*

(b) The person executing this Agreement on behalf of Purchaser has been

duly authorized and has the full right and authority to enter into this Agreement on behalf of Purchaser. The execution and delivery by Purchaser of, and performance and compliance by Purchaser with, the terms and provisions of this Agreement do not violate any term, condition or provision of (i) Purchaser's organizational documents; (ii) any judgement, order, decree, regulation or ruling of any court or other government authority to which Purchaser is subject; or (iii) any agreement or contract to which Purchaser is a party or is bound. No consent, waiver, or approval by any third party which has not already been received is required in connection with the execution, delivery and performance by Purchaser of this Agreement.

6. Proration of Real Estate Taxes. Owner is a municipal corporation and pays no real property taxes in relation to Tract II, thus no proration of taxes at Closing is necessary. Buyer shall be solely responsible for the payment of any real property taxes and special assessments imposed on Tract II, if any, from the Closing Date and thereafter.

7. CLOSING DOCUMENTS AND POSSESSION.

7.1 At the Closing, Owner shall execute and deliver to Purchaser:

- (a) A special warranty deed by Owner entity conveying Tract II to Purchaser, subject only to the Permitted Exceptions, warranting title to Tract II against all claiming by, under or through Seller;
- (b) An Owner's Affidavit provided by the title insurance company, in form reasonably acceptable to Owner, with respect to potential mechanics' liens caused by or at the request of Owner;
- (c) A Certification of Non-Foreign Status with respect to Owner as required by Section 1445 of the Internal Revenue Code; and
- (d) Such other documents as the title insurer may reasonably deem necessary to consummate the transaction contemplated hereunder to the extent reasonably acceptable to Owner.

7.2 The Purchase Price shall be delivered to Owner at Closing in immediately available funds, and possession of Tract II shall be delivered to Purchaser at Closing, subject to the Permitted Exceptions.

7.3 Except as otherwise expressly set forth in this Agreement to the contrary, all costs and expenses of Closing shall be the responsibility of Purchaser.

8. SUCCESSORS AND ASSIGNS. The terms and conditions contained herein are to apply to and bind the heirs, executors, administrators, successors and assigns of Owner and Purchaser. Notwithstanding the foregoing sentence, (i) Purchaser may not assign this Agreement without the prior written consent of Owner, which consent may be withheld by Owner in its sole discretion (provided however Owner may not unreasonably withhold, condition or delay approval of an assignment to an affiliated entity with a majority of individuals then serving on its board of directors who also then serve on the board of directors of Purchaser), and (ii) any conveyance or assignment by Owner of any of Owner's interests in Tract II shall expressly provide that such conveyance or assignment is subject in all respects to the terms and provisions of this Agreement. Any permitted conveyance or assignment hereunder shall not relieve the conveying or assigning party from liability hereunder.

9. BROKER'S FEES. Owner and Purchaser represent and warrant to each other that neither they nor their respective employees or agents have dealt with or consulted with any real estate broker, salesman or finder in connection with the transaction contemplated by this agreement, and each agrees to indemnify, defend and hold the other harmless against any claim or demand made by any other real estate broker, salesman or finder claiming to have dealt or consulted with the respective Owner or Purchaser or their representatives, employees, or agents contrary to the foregoing representation and warranty.

10. DEFAULT BY OWNER; SPECIFIC PERFORMANCE. In the event Purchaser exercises the Option and Owner fails to perform Owner's obligations hereunder after written notice and a failure to cure the same, as Purchaser's sole and exclusive remedy, Purchaser may either (a) require

that the Option Payment shall be immediately returned to Purchaser and this Agreement be terminated; or (b) enforce specific performance to close the contemplated transaction (provided, however, that Purchaser must file an action to specifically enforce this agreement within sixty (60) days after the original Closing date or will be deemed to have waived such remedy).

11. ATTORNEYS' FEES; GOVERNING LAW; VENUE. Either party hereto which prevails in any legal or equitable proceeding against the other party in a matter brought under or relating to this agreement or the transaction contemplated hereby shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party. The governing law for any dispute hereunder or in connection with the conveyance of Tract II as contemplated herein shall be Indiana law, with venue for any claim hereunder being Allen County, Indiana. The parties hereto specifically waive the right to a jury trial.

12. Miscellaneous.

(a) Survival of Agreement. The representations, warranties and covenants of Owner and Purchaser contained in this Agreement or in any other document executed by Owner or Purchaser to effect the intended transaction, shall survive the Closing and shall remain in full force and effect at all times.

(b) Agreement Binding. This Agreement shall be binding upon and shall inure to the benefit of the Owner and Purchaser and their respective successors and assigns.

(c) Headings and Captions. The several headings and captions of the Sections and Subsections used in this Agreement are for convenience or reference only and shall, in no way, be deemed to limit, define or restrict the substantive provisions of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement of Purchaser and Owner with respect to the purchase and sale of the Tract II superseding

any prior or contemporaneous agreement with respect thereto. No amendment or modification of this Agreement shall be binding upon the parties unless made in writing and signed by both Owner and Purchaser.

(e) Cooperation. Purchaser and Owner shall cooperate fully with each other to carry out and effectuate the purchase and sale of Tract II in accordance with this Agreement. Wherever the approvals of Purchaser or Owner are required, such approvals shall not unreasonably be withheld, conditioned or delayed.

(f) Governing Law. This Agreement and the rights of the parties shall be governed by and construed in accordance with the laws of the State of Indiana.

(g) Counterparts. Facsimile or emailed signatures shall be deemed an original and this Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) Recording. This Agreement shall not be recorded but the parties agree to execute, acknowledge and record the Memorandum of Option Agreement – Tract II in substantially the form attached hereto as Exhibit C.

13. COUNTERPARTS. This instrument may be executed in separate counterparts and exchanged electronically, each of which when so executed and exchanged shall be deemed an original, but all of such counterparts shall together constitute but one and the same instrument.

[The remainder of this page is intentionally left blank. See following page for signatures.]

IN WITNESS WHEREOF, all of the parties have executed this instrument as of the ____
day of _____, 2019 (the "Effective Date").

OWNER:

CITY OF FORT WAYNE, INDIANA

By: _____

Printed Name: _____

Title: _____

PURCHASER:

ARTS UNITED OF GREATER FORT WAYNE, INC.,
An Indiana non-profit corporation

By: _____

Printed Name: _____

Title: _____

Exhibit A

Legal Description of Real Estate ("Tract II")

Tract 2 – 0.399 Acres

A part of the vacated Original Plat of Fort Wayne to the City of Fort Wayne, Indiana, as shown in the Office of the Recorder of Allen County, Indiana, more particularly described as follows:

Commencing at the intersection of Clinton Street and Superior Street, said point being point number 600 on a VS Engineering, Inc. survey completed on May 28, 2014 as Survey Number 1172175; thence North 78 degrees 08 minutes 34 seconds East (VS Engineering, Inc. Survey bearing and basis of bearings to follow), a distance of 428.02 feet along the centerline of Superior Street to the centerline of Barr Street; thence South 12 degrees 02 minutes 30 seconds East, a distance of 305.59 feet along the centerline of Barr Street and along the centerline of a vacated portion of Barr Street to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set; thence South 77 degrees 59 minutes 30 seconds West, a distance of 145.00 feet to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set at the POINT OF BEGINNING of the herein described tract; thence South 12 degrees 00 minutes 30 seconds East, a distance of 95.00 feet parallel with said centerline to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set; thence South 77 degrees 59 minutes 30 seconds West, a distance of 181.00 feet to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set; thence North 12 degrees 00 minutes 30 seconds West, a distance of 95.00 feet parallel with said centerline to a 5/8" steel rebar with a "Miller Firm #0095" identification cap set; thence North 77 degrees 59 minutes 30 seconds East, a distance of 181.00 feet to the Point of Beginning. Containing 0.399 acres, more or less. Subject to easements of record.

Exhibit B

Conceptual Description of Arts United Center expansion on Tract II

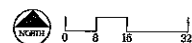
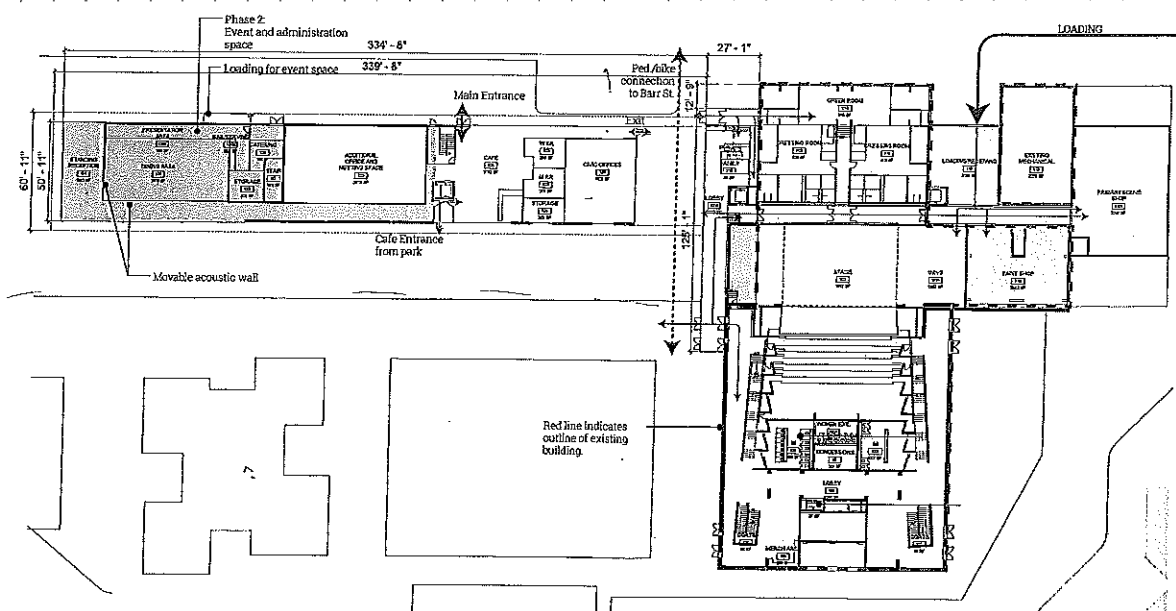


Exhibit C

(Memorandum of Option Agreement – Tract II)

MEMORANDUM OF OPTION AGREEMENT – TRACT II

THIS MEMORANDUM OF OPTION AGREEMENT – TRACT II is made and entered into on _____ by and between the City of Fort Wayne, Indiana, as Owner, and Arts United of Greater Fort Wayne, Inc., as Purchaser. Owner and Purchaser have entered into an Option Agreement – Tract II, dated of even date herewith, the terms and conditions of which are made a part of this Memorandum of Option Agreement – Tract II as though fully set forth herein, wherein Owner has granted Purchaser an option to purchase certain premises in the County of Allen, State of Indiana, described in Exhibit A attached hereto.

EXECUTED on _____

OWNER:

CITY OF FORT WAYNE, INDIANA

By: _____

Printed Name: _____

Title: _____

PURCHASER:

ARTS UNITED OF GREATER FORT WAYNE, INC.,
An Indiana non-profit corporation

By: _____

Printed Name: _____

Title: _____

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF INDIANA)
COUNTY OF ALLEN)

On _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas F. Henry, as Mayor of the City of Fort Wayne, Indiana, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument of the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Indiana that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of notary _____ (Seal)

Resident of Allen County, Indiana

STATE OF INDIANA)
COUNTY OF ALLEN)

On _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Susan Mendenhall, President of Arts United of Greater Fort Wayne, Inc., whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument of the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Indiana that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of notary _____ (Seal)

Resident of Allen County, Indiana

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Lawrence Shine.

This instrument prepared by Lawrence E. Shine, Associate City Attorney, City of Fort Wayne, 200 East Berry Street, Suite 430, Fort Wayne, Indiana 46802