

**A RESOLUTION OF THE
COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA,
REGARDING THE APPROVAL OF THE APPROPRIATION OF
AVAILABLE LOCAL INCOME TAX REVENUES TO PAY FOR THE
ACQUISITION BY THE FORT WAYNE REDEVELOPMENT COMMISSION
OF LAND AND IMPROVEMENTS DEEMED NECESSARY FOR FURTHER
EXPANSION OF THE RIVERFRONT DEVELOPMENT PLANS OF THE
CITY OF FORT WAYNE
(SCHAAB METAL PRODUCTS INC.)**

WHEREAS, the City of Fort Wayne Redevelopment Commission (the “Commission”), in consultation with the owners of Schaab Metal Products, Inc. (“Schaab”), a sheet metal contractor located at 1216 N Harrison St. (PIN #021202204016000074), 1228 N Harrison St. (PIN #021202204015000074), 1302 N Harrison St. (PIN #021202204014000074), and 1306 N Harrison St (PIN #021202204013000074), (collectively, the “Real Estate”), which Real Estate is depicted in attached Exhibit A, has determined that: (i) Schaab’s ongoing business operations upon the Real Estate and current lease of storage buildings on property owned by the Commission adjacent to the Real Estate is incompatible with the proposed Riverfront Phase II public space, and (ii) construction of Riverfront Phase II would substantially impair Schaab’s ability to operate its current business upon the Real Estate; and

WHEREAS, to provide for the mutual benefit of the parties, the Commission desires to acquire the Real Estate at a purchase price sufficient to facilitate the relocation of the Schaab business and equipment to an industrial building in the City of Fort Wayne of similar size, appropriate zoning, comparable condition, and with similar features, and has further approved a Purchase Agreement for the Real Estate (the “Purchase Agreement”), attached hereto as Exhibit B, the execution of which is subject

1 to approval by the Common Council of the funds necessary for the acquisition of the
2 Real Estate; and

3 WHEREAS, facilitating the relocation of the Schaab business and
4 equipment to a similarly sized industrial building will require the Commission to pay a
5 purchase price above the higher of two appraisals received for the Real Estate; and
6

7 WHEREAS, the Commission has requested the approval of expenditure of
8 riverfront local income tax revenues ("Riverfront LIT") in an amount not to exceed One
9 Million Seven Hundred Twenty-Six Thousand Five Hundred and Eighty and No/100
10 Dollars (\$1,726,580.00) to the payment of the purchase price pursuant to the Purchase
11 Agreement; and
12

13 WHEREAS, the Common Council has determined that the Real Estate is a
14 critical site for the successful implementation of Riverfront Phase II due to its location in
15 the center of the Phase II improvements, and that acquisition of the Real Estate will allow
16 for greater flexibility in the design and construction of Riverfront public space, while
17 also providing an excellent location for private development compatible with the new
18 public space, bringing additional private investment to the Riverfront; and
19

20 WHEREAS, the Common Council has determined that acquisition of the
21 Real Estate is in the best interests of the citizens and taxpayers of the City and desires to
22 provide for the expansion of the City's riverfront development efforts and approve the
23 LIT Riverfront expenditure as provided in this Resolution;

24 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
25 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

26 1. The Common Council finds, determines, ratifies and confirms that
27 the acquisition of the Real Estate is in the best interests of the citizens and taxpayers of
28 the City of Fort Wayne, will support the redevelopment goals and objectives of the City
29
30

1 of Fort Wayne, and will support the ongoing riverfront development goals previously
2 approved and authorized for the area.

3 2. The Common Council does hereby approve payment of the
4 purchase price for the Real Estate pursuant to the Purchase Agreement from the LIT
5 Riverfront Property Acquisition budget in an amount not to exceed One Million Seven
6 Hundred Twenty-Six Thousand Five Hundred Eighty and No/100 Dollars
7 (\$1,726,580.00).
8

9 3. This Resolution shall be in full force and effect from and after the
10 time it has been adopted by Common Council, approved by the Mayor and otherwise
11 executed and delivered in accordance with any and all laws appertaining thereto.
12

13
14 _____
Council Member

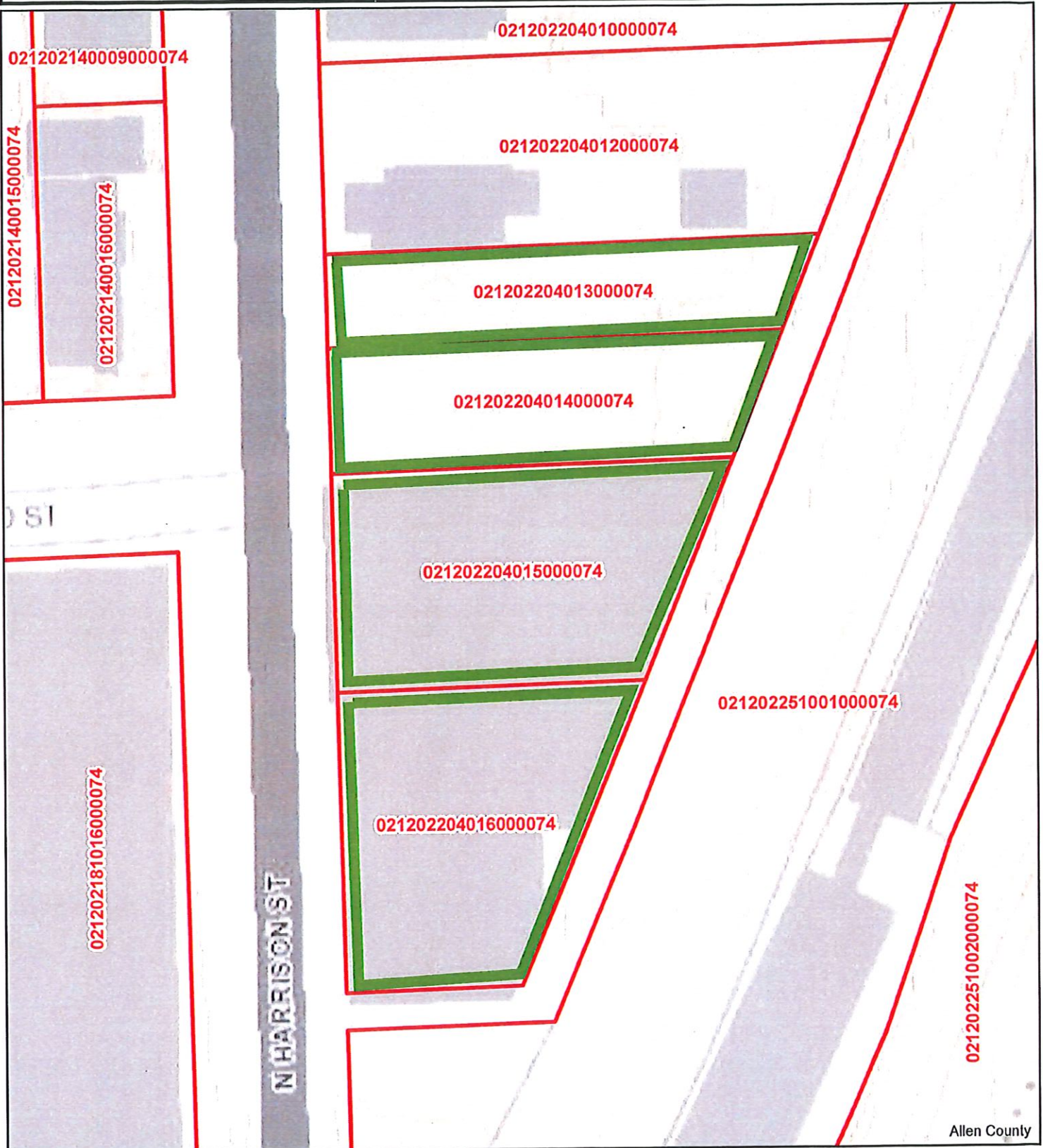
15 APPROVED AS TO FORM AND LEGALITY
16

17
18 _____
Carol Helton, City Attorney
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EXHIBIT A

THE “REAL ESTATE”

(see following page)



Allen County

Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East



Date: 3/10/2022

1" = 42'

EXHIBIT B

THE “PURCHASE AGREEMENT”

(see following pages)

REAL ESTATE PURCHASE AGREEMENT

1. This Real Estate Purchase Agreement (“**Agreement**”) is made to be effective the ____ day of _____, 2022 (the “**Effective Date**”), by and among The City of Fort Wayne, Indiana, Department of Redevelopment, acting by and through the Fort Wayne Redevelopment Commission, or its nominee, successors or assigns (“**Buyer**”) and Schaab Metal Products Inc., an Indiana corporation (“**Seller**”).
2. **PROPERTY:** Seller agrees to sell and convey to Buyer, and Buyer agrees to buy from Seller the real property at 1216 through 1306 N. Harrison Street, Fort Wayne, Indiana, and generally described as follows: the South 21 feet of Lot 6 and the North 9 feet Lot 7; the South 31 feet Lot 7 and the North 10 feet Lot 8 (except street); the South 30 feet of Lot 8 and Lot 9; and Lot 10 and Lot 11 all in Eckert’s Suburban Addition to the City of Fort Wayne (PINs 02-12-02-204-013.000-074, 02-12-02-204-014.000-074, 02-12-02-204-015.000-074, and 02-12-02-204-016.000-074) and depicted on **Exhibit A** attached hereto and incorporated herein, with existing site improvements, and all privileges and appurtenances pertaining thereto, including but not limited to all of Seller’s right, title, and interest in and to all easements, adjacent streets, utility reservations, alleys, rights of way, strips and gores of land, mineral rights, water and water rights, wells, well rights and permits, water and sewer taps, sanitary or storm sewer capacity or reservations, rights under utility agreements with any applicable governmental or quasi-governmental entities or agencies with respect to the providing of utility services to such real property, tenements, hereditaments, privileges, licenses and appurtenances, reversions, and remainders in any way belonging, remaining, or appertaining thereto and together with all improvements, fixtures, personal property, trees, timber, or other crops and plants and minerals located thereunder or thereon (collectively referred to as the “**Property**”). The legal description of the Property shall be determined by the Survey obtained by Buyer under Section 9, and if no Survey is obtained by Buyer, then according to the legal description in the Title Commitment.
3. **PRICE:** The net purchase price for the Property (the “**Purchase Price**”) shall be One Million, Seven Hundred Twenty-Six Thousand, Five Hundred Eighty and 00/100 Dollars (\$1,726,580.00). The Purchase Price shall be payable at Closing (as defined below) and subject to the prorations and adjustments hereinafter described and in accordance with the terms and conditions stated in this Agreement.
4. **CLOSING:** Subject to the provisions of this Agreement, the closing of the sale of the Property (the “**Closing**”) shall take place via escrow with the Title Company (as defined in **Section 10** herein), no later than thirty (30) days after the expiration of the Due Diligence Period, as the same may be extended by the mutual agreement of the parties, which day shall be the “**Closing Date**.”
5. **POSSESSION:** Seller is under contract with Impact Holdings, LLC to purchase property at 1311/1321 East Wallace Street, Fort Wayne, Indiana as replacement property for the Seller’s business, currently being operated from the Property (the “**Replacement Property**”). Seller cannot close on the purchase of the Replacement Property until Closing occurs hereunder. Seller shall remain in possession of the Property and the ROW Parcel (defined below) for a period of up to ninety (90) days after the Closing Date (the “**Post Closing Possession Period**”). The Post Closing Possession Period shall be governed by the terms of a standard Commercial Real Estate Lease (the “**Holdover Lease**”) containing such terms and conditions as are reasonable and customary in Allen County, Indiana; provided, however, for avoidance of doubt, and notwithstanding anything contained herein to the contrary, the Holdover Lease shall contain the following terms and conditions: (1) Buyer will not charge Seller any rent during the term of the Holdover Lease; (2) Seller will hold Buyer harmless and indemnify Buyer from any losses Buyer may sustain during the term of the Holdover Lease; (3) Seller shall carry property and casualty insurance for the full

replacement value of the improvements located on the Property, and general liability insurance in amounts acceptable to Buyer in its reasonably business judgment; and (4) Seller shall maintain the Property, and the improvements thereon, at its expense, in good condition and repair, subject to ordinary wear and tear. Seller and Buyer shall finalize the Holdover Lease prior to the expiration of the Due Diligence Period. Following the expiration or earlier termination of the Holdover Lease, possession of the Property shall be delivered to Buyer in its present condition, subject to ordinary wear and tear and further subject to any damage caused by the Examinations (as defined in Section 6 herein).

6. DUE DILIGENCE PERIOD:

A. Buyer shall have ninety (90) days following the later of (i) the Effective Date and (ii) Buyer's receipt of the Seller Documents (as defined below) (the "**Due Diligence Period**") to conduct such due diligence as Buyer may in its sole judgment desire, including but not limited to engineering studies, surveys, soil tests, environmental assessments, inspections, and other examinations (collectively, "**Examinations**"); and to review title and survey.

B. Buyer's obligations under this Agreement shall be conditioned upon Buyer's review and approval, in its sole and absolute discretion, of the Seller Documents (as hereinafter defined) and the Property and all aspects thereof, including by way of illustration but not limitation, all physical and environmental matters relating to the Property. If Buyer is not satisfied with the Property, in its sole and absolute discretion, then before the expiration of the Due Diligence Period, Buyer may deliver written notice to Seller terminating this Agreement, in which case this Agreement shall be of no further force or effect. If Buyer does not terminate this Agreement as provided in this **Section 6(B)**, Buyer agrees that it is purchasing the Property "AS IS – WHERE IS," subject only to the representations and warranties set forth in this Agreement, and Buyer disclaims and waives any right to assert a claim against Seller based on breach of contract or breach of warranty arising from the condition of the Property or the inability of the Buyer to use the Property for Buyer's intended purposes.

Upon commencement of the Due Diligence Period and throughout the term of this Agreement, Buyer and its representatives and agents shall have the right to enter upon the Property to perform and complete the activities and investigations set forth herein. The Examinations are to be made at Buyer's expense, and Buyer shall be liable for any damage (ordinary wear and tear excepted) caused to the Property by Buyer or Buyer's agents during the Examinations. Further, Buyer agrees to indemnify and hold harmless Seller from and against any damages or claims for injuries to any persons or to the Property that arise as a direct result of the Examinations, except to the extent such damages or claims are caused by or arise from (i) preexisting conditions, (ii) Hazardous Materials not first placed on the Property by Buyer, its agents, or representatives, (iii) mere discovery of existing conditions, facts or circumstances that adversely affect (or may adversely affect) the value of the Property, or (iv) Seller's or Seller's employees' or agents' negligence or intentional misconduct which adversely affects the value of the Property or results in a third-party claim, which indemnity shall survive the Closing or any earlier termination of this Agreement.

C. The purchase of the Property is subject to satisfaction, in Buyer's sole discretion, or waiver by Buyer, within the Due Diligence Period, as applicable, of the condition of the Property, including without limitation, the following conditions:

- (i) There are no encroachments on the Property and the Property does not encroach on any adjacent property.
- (ii) Seller's title to the Property is good, merchantable, and marketable fee simple title, free and clear of any liens, encumbrances, highways, right-of-way, easements, licenses, restrictions, leases, tenancies, mineral leases, reservations or severances, agreements, covenants, conditions or limitations, except for the lien of then current real property taxes which are not delinquent and those exceptions which Buyer, in its sole discretion, may approve after examination of title and survey as hereinafter provided (i.e., the Permitted Exceptions, as defined below).
- (iii) Buyer's determination to its satisfaction that (a) the soil conditions, qualities, density, and bearing capacity of the Property are suitable for Buyer's intended use without the necessity of any extraordinary filling or compaction or any other extraordinary engineering measures or expenditures which, in the sole discretion of Buyer, would render the Property undesirable for Buyer's intended use; and (b) the Property is not located in any area of special flood hazard as designated by the United States Department of Housing and Urban Development, the Federal Emergency Management Agency, or any other federal, state, or local agency, or in any regulated or protected wetlands area.
- (iv) Buyer obtaining, at Buyer's sole cost and expense, boring, percolation, and/or other soil tests determining the physical characteristics of the sub-strata of the Property and showing that the soil and ground water are not contaminated and that the Property is satisfactory, all in Buyer's sole discretion, for Buyer's intended use. If a Phase I Environmental Site Assessment ("Phase I") recommends a Phase II Environmental Site Assessment ("Phase II"), then Buyer may, at its sole cost and expense, obtain within thirty (30) days after receipt of the Phase I a Phase II and the Due Diligence Period, shall automatically be extended until ten (10) days after Buyer's receipt of the Phase II. Buyer shall be entitled to terminate this Agreement by written notice to Seller at any time prior to the expiration of the Due Diligence Period, as applicable, if the Phase I or Phase II is not acceptable to Buyer, as determined in Buyer's sole discretion.
- (v) That there are no Hazardous Materials (as defined below) present at, on, in, or under the Property and the Property has never been used for any operations or activities which involve generation, manufacture, processing, transportation, treatment, storage, disposal, or handling of any Hazardous Materials.
- (vi) That the Property complies with Environmental Law (as defined below).
- (vii) That the Property is not subject to any proceeding, claim, liability, action, order, judgment, lien, or listing under any Environmental Law, or the threat or likelihood thereof.

The term "**Hazardous Materials**" shall mean any substance or material that is or becomes regulated, defined, or designated by any federal, state, or local governmental authority as hazardous, extremely hazardous, imminently hazardous, dangerous, or toxic, or as a pollutant, contaminant, or waste, and shall include, without limitation, PCBs, lead, mercury, arsenic, volatile organic compounds,

asbestos, asbestos containing materials, radioactive materials, oil, and petroleum products and byproducts. The term “**Environmental Law**” shall mean all current and future federal, state, and local statutes, regulations, ordinances, and rules relating to (i) the emission, discharge, leaking, release, or threatened release of Hazardous Materials into the air, surface water, groundwater, or land; (ii) the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a Hazardous Material; or (iii) the protection of human health, safety, or the indoor or outdoor environment, including without limitation the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Occupational Safety and Health Act, all amendments thereto and successors thereof, all regulations promulgated thereunder, and their state statutory and regulatory counterparts.

7. **TAXES:** All real property taxes assessed for any prior calendar year and remaining unpaid, shall be the obligation of Seller, and all taxes assessed for the year of Closing and payable in the following year shall be prorated between Seller and Buyer on a calendar year basis as of the Closing Date. If the taxes for the Property have not been determined at the Closing of the transaction, said taxes shall be assumed to be the same as the prior year for the purpose of such proration and a credit at Closing shall be given to Buyer for taxes not due and payable as of the Closing Date, but accruing prior to the Closing Date.
8. **RISK OF LOSS AND INSURANCE:** Seller shall bear the entire risk of loss of the Property until Closing. In the event any damage or destruction to the Property is not fully repaired prior to Closing, Buyer, at its option, may either (a) terminate this Agreement, or (b) elect to close the transaction, in which event Seller’s right to all insurance proceeds resulting from such damage or destruction shall be assigned in writing by Seller to Buyer, and Seller shall reimburse Buyer for any deductible amount.
9. **SURVEY:** Buyer shall obtain, at Buyer’s expense, a staked survey, which survey shall comply with Minimum Standard Detail Requirements meeting the current accuracy standards for ALTA/NSPS Land Title Surveys (the “**Survey**”). The Survey shall be certified as of a current date by a surveyor registered in the State of Indiana and shall show the exact location of all improvements, building setback lines, easements, rights-of-way, and encroachments affecting the Property, and all other matters apparent thereon, and the relation of the Property to all adjacent properties and public thoroughfares. Further, the Survey shall reflect whether the Property is located in a designated flood zone area and shall certify the gross acreage of the Property. The Survey legal description (as well as the historic deed description) of the Property shall be used in Seller’s deed conveying the Property to Buyer.
10. **TITLE:** Buyer shall obtain, at Buyer’s expense, a Commitment for an ALTA Owner’s policy of Title Insurance with extended coverage (the “**Commitment**”) from the title agent and title company of its choice (the “**Title Company**”). Buyer shall deliver to Seller a copy of the Commitment within five (5) days of Buyer’s receipt thereof.
11. **TITLE AND SURVEY APPROVAL:** If Buyer has an objection to items disclosed in the Commitment or the Survey (as the same are updated from time to time), Buyer shall make written objections to Seller within thirty (30) days of the date of delivery of all of the Commitment, the recorded documents and the Survey (or applicable update thereof which disclosed additional matters). If no such objections are made, Buyer shall be deemed to have waived all objections to matters disclosed in the Commitment, other than liens of a monetary nature which may be removed by payment of a liquidated sum (“**Permitted Exceptions**”). If Buyer makes such objections, Seller

shall have fifteen (15) days from the date such objections are disclosed to cure the same. If the objections are not satisfied within such time period, Buyer may either (a) terminate this Agreement by written notice to Seller prior to Closing, or (b) waive the unsatisfied objections (which shall be added to the "Permitted Exceptions") and close the transaction in accordance with this Agreement. Any endorsements to the Commitment or the Title Policy requested by Buyer shall be at Buyer's expense.

12. **PRORATIONS AND SPECIAL ASSESSMENTS:** Any and all income and ordinary operating expenses of the Property, including, but not limited to, rent and public utility charges, if any, shall be prorated as of the day before the Closing Date. Any special assessments applicable to the Property for municipal improvements due and payable prior to the Closing Date and which benefit the Property shall be paid by Seller. Buyer will assume and agree to pay all special assessments for municipal improvements which become due and payable on and after the Closing Date. Notwithstanding the foregoing, Buyer shall not be obligated for payments under any management, service or other contractual agreements affecting the Property and the same shall be terminated prior to Closing unless Buyer expressly elects to assume the same.

In the event any adjustments pursuant to this paragraph or **Section 7** are determined to be erroneous, then either party hereto who is entitled to additional monies shall invoice the other party for such additional amounts as may be owing, and such amounts shall be paid within ten (10) days from the receipt of any such invoice; provided that no amounts may be so billed following the expiration of one (1) year after the date of Closing. Nothing contained in this subparagraph shall prevent either party from disputing any claim made by the other party that an adjustment made at Closing was erroneous, so long as such claim is made within one (1) year following Closing.

13. **ROW PARCEL; CREDIT FOR UNPAID RENT:** Buyer, as landlord, and Seller, as tenant, are parties to that certain Lease Agreement dated February 13, 2014 (the "**Lease**"), whereby Seller leases from Buyer the tract of land more particularly described therein, which tract of land is directly adjacent to the Property (the "**ROW Parcel**"). As of the date hereof, Seller has not paid rent in accordance with the terms thereof. To the extent Seller's breach is not cured prior to the Closing Date, Buyer shall receive a credit at closing for such unpaid rent. Additionally, Buyer and Seller agree that following Closing, the Lease shall be deemed to be terminated, and neither Seller nor Buyer shall have any obligations thereunder. Buyer and Seller further agree that upon Closing, Seller's user of the ROW Parcel shall be governed by the Holdover Lease.

14. **SALES EXPENSES:** Seller and Buyer agree that all sales expenses are to be paid in cash prior to or at the Closing.

- A. **SELLER'S EXPENSES:** In addition to the prorations provided in **Sections 7, 12 and 13**, Seller agrees to pay all costs of releasing existing loans and recording the releases; and the following costs: taxes accruing as of the Closing Date; the premium for the Owner's Title Insurance Policy; one-half of any and all closing fees and fees of Escrow Agent; the Broker's fee pursuant to **Section 22**, below; and other expenses to be paid by Seller under other provisions of this Agreement.
- B. **BUYER'S EXPENSES:** In addition to the prorations provided in **Sections 7, 12 and 13**, Buyer agrees to pay recording fees to record the deed; the cost of the Survey; costs of any endorsements to the Owner's Title Insurance Policy; one-half of any and all closing fees and fees of Escrow Agent; and other expenses to be paid by Buyer under other provisions of this Agreement.

15. **DEFAULT:** In the event that Seller fails to timely comply with all conditions, covenants and obligations hereunder, or if any of the representations and warranties of Seller contained herein are untrue either when made or become untrue any time thereafter, or if Seller otherwise breaches this Agreement, such failure or misrepresentation shall be an event of default by Seller (a “**Seller Default**”), then notwithstanding any other provision of this Agreement to the contrary Buyer may seek specific performance, and Buyer shall have no further right or remedy at law or in equity against Seller. If Buyer fails to timely comply with all conditions, covenants and obligations hereunder, or if any of the representations and warranties of Buyer contained herein are untrue either when made or become untrue any time thereafter, or if Buyer otherwise breaches this Agreement, such failure or misrepresentation shall be an event of default by Buyer (a “**Buyer’s Default**”) then notwithstanding any other provision of this Agreement to the contrary Seller may seek legal or equitable remedies.

16. **ATTORNEY’S FEES:** Any party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party brought for a breach of this Agreement shall be additionally entitled to recover court costs and reasonable attorney’s fees from the non-prevailing party.

17. DUTIES OF BUYER AND SELLER AT CLOSING:

A. At the Closing, Seller shall deliver to Buyer, the following:

- (1) A duly executed and acknowledged Corporate Limited Warranty Deed conveying to Buyer or its designee good, marketable, and indefeasible title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, reservations and restrictions suffered during the time in which Seller had title, subject only to the Permitted Exceptions;
- (2) A duly executed and acknowledged Vendor’s Affidavit in a form acceptable to Buyer and Title Company;
- (3) An Owner’s Title Insurance Policy, with extended coverage, including those endorsements necessary address or cure any title defects objected to by Buyer under Section 11 (the “**Title Policy**”) issued by Title Company, in the full amount of the Purchase Price, dated as of Closing, insuring Buyer’s fee simple title to the Property to be good, marketable, and indefeasible, subject only to the Permitted Exceptions;
- (4) Evidence of its capacity and authority for the closing of this transaction;
- (5) A certification establishing that no federal income tax is required to be withheld under the Foreign Investment and Real Property Tax Act;
- (6) An executed Indiana Disclosure of Sales Information form complying with I.C. 6-1.1-5.5;
- (7) A quit-claim bill of sale and general assignment conveying any development rights and/or other tangible or intangible property used to support Seller’s

activities on the Property (including, without limitation, any storage facilities or other improvements to the Property, if any);

- (8) A duly executed Closing Statement; and
- (9) All other necessary documents reasonably requested by Buyer to close this transaction.

B. At the Closing, Buyer shall deliver and perform the following:

- (1) Pay the Purchase Price in the form of readily available funds;
- (2) Pay the premium for all other endorsements to the Title Policy requested by Buyer;
- (3) Execute a Closing Statement;
- (4) Provide evidence of its capacity and authority for the closing of this transaction, if required by the Title Company;
- (5) Execute a counterpart of the Indiana Disclosure of Sales Information form; and
- (6) Execute all other necessary documents reasonably requested by Seller to close this transaction.

18. CONDEMNATION: If prior to Closing, condemnation proceedings are commenced against any portion of the Property or Seller receives notice of a proposed taking prior to Closing, Seller shall immediately notify Buyer of such notice or taking and Buyer shall have the option of either (i) terminating this Agreement by written notice to Seller within fifteen (15) days after Buyer's receipt of said notice, whereupon, notwithstanding any other provision of this Agreement to the contrary, this Agreement and all rights and obligations created hereunder shall be of no further force or effect; or (ii) requiring Seller to convey the Property, or such portion thereof as Buyer desires, to Buyer pursuant to the terms and provisions hereof and to transfer and assign to Buyer at Closing all of Seller's right, title, and interest in and to any award or other payment made or to be made by reason of such condemnation. Seller and Buyer hereby further agree that Buyer shall have the right to participate in all negotiations with any such governmental authority related to the condemnation of the Property.

19. DOCUMENTS FROM SELLER: Seller shall provide Buyer, within five (5) business days following the Effective Date, copies of the following documents or information relating to the Property, if in Seller's possession or reasonably available from third parties (the "Seller Documents"):

- A. Prior title insurance policies, title commitments, title exception documents, vesting deeds, plats, and surveys.
- B. All environmental documents, including but not limited to prior environmental reports.
- C. All building plans, construction contracts, permits, and zoning approvals.

- D. Unrecorded leases (including farm leases), easements, and encumbrances, if any.
- E. Any other documents or reports relating to the Property and any other documents, materials, or information requested by Buyer.

20. REPRESENTATIONS AND WARRANTIES OF SELLER: To induce Buyer to execute this Agreement, Seller represents, warrants and covenants to Buyer as follows:

- A. Seller has the full capacity, right, power and authority to execute, deliver, and perform this Agreement and all documents to be executed by Seller pursuant hereto, and all required actions and approvals have been taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto. This Agreement and all documents to be executed pursuant hereto by Seller are and shall be valid, binding upon and enforceable against Seller in accordance with their respective terms.
- B. No action, suit, claim, arbitration, litigation, or other proceedings is pending or threatened against Seller or related to the Property or any part thereof.
- C. Seller is not involved in any proceedings by or against Seller in any court under the Bankruptcy Code, or any other insolvency or debtor's relief law, whether federal or state, or for the appointment of a trustee, receiver, liquidator, assignee, or other similar official of Seller or a substantial part of Seller's property.
- D. Seller will not create, permit, or suffer any lien or other encumbrance to attach to or affect the Property, other than the lien of non-delinquent real estate taxes. On the Closing Date, there will be no liens and/or unpaid claims of contractors, materialmen, or laborers which could give rise to a lien against the Property, and there will be no mortgages or security interests against the Property.
- E. Seller has good and marketable fee simple title to the Property, free and clear of all liens, security interests, encumbrances, recorded and unrecorded leases, service contracts, and restrictions of every kind and description, except the Permitted Exceptions and liens and encumbrances to be released on the Closing Date. There is no offer, option to purchase, right of first offer, or right of first refusal for the sale or lease of all or any portion of the Property.
- F. Except as revealed in the Commitment or Survey, there are no persons or entities in possession or occupancy of the Property or any part thereof other than Seller, nor are there any other persons or entities who have possessory or other rights with respect to or interests in the Property or any part thereof. From the date of execution of this Contract through the date of Closing, Seller will not enter into any lease of any portion of the Property.
- G. To Seller's actual knowledge, no Hazardous Materials have been used, generated, manufactured, stored, treated, released, or disposed of at, in, on, or under the Property.
- H. To Seller's actual knowledge, the Property complies with Environmental Law and Seller has received no other notices to the contrary.

- I. From the date of execution of this Contract through the date of Closing, Seller shall continue to maintain the Property in its present condition, and shall not, subject to any activities conducted on the Property by Buyer pursuant to **Section 6**, alter any portion of the Property in any material respect or construct any material improvements to the Property.
- J. From the date of execution of this Contract through the date of Closing, Seller will not enter into any oral or written agreements affecting the Property which might become binding on Buyer or the Property at or after Closing.
- K. To Seller's actual knowledge, the Property complies with all applicable laws and ordinances, and the present maintenance, operation and use of the Property does not violate any environmental, zoning, subdivision, building or similar law, ordinance, code, regulation or governmental permit affecting the Property, and Seller shall provide to Buyer promptly following Seller's receipt, written notice of alleged material violations of applicable law with respect to the Property received by Seller from and after the Effective Date.

The foregoing representations are true, correct, and complete, and the foregoing warranties are in full force and effect and binding on Seller, as of the Effective Date of this Agreement, and shall be true and correct and in full force and effect, and deemed to have been reaffirmed and restated by Seller as of the Closing Date, shall survive Closing, shall not be deemed merged into any instrument of conveyance delivered at Closing, and shall inure to the benefit of and be enforceable by Buyer and its successors and assigns.

Except as provided below, the representations and warranties contained in this **Section 20** will survive for twelve (12) months after the Closing Date, and will thereafter terminate, together with any claims under or remedies associated with **Section 15**, above. The representations and warranties contained in these **Subsections 20(A) and (C)** will survive indefinitely.

21. REPRESENTATIONS AND WARRANTIES OF BUYER: To induce Seller to execute this Agreement, Buyer represents, warrants and covenants to Seller as follows:

- A. Buyer has the full capacity, right, power and authority to execute, deliver, and perform this Agreement and all documents to be executed by Buyer pursuant hereto, and all required actions and approvals have been taken and obtained, and no further action must be taken or obtained by any government entity after this Agreement has been signed in order for this Agreement to be valid and binding on the Buyer. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Buyer are and shall be duly authorized to sign the same on Buyer's behalf and to bind Buyer thereto. This Agreement and all documents to be executed pursuant hereto by Buyer are and shall be valid, binding upon and enforceable against Buyer in accordance with their respective terms.
- B. Buyer will not begin any condemnation proceedings against any portion of the Property from the Effective Date until Closing, or until after this Agreement is rightfully terminated according to its terms.

22. MISCELLANEOUS:

- A. Any notice or demand required or permitted to be given under this Agreement or by law shall be in writing and deemed to have been duly given (a) on the date of delivery of such notice, if delivered in person by the sending party (or its agent), (b) on the date an electronic mail containing such notice is sent (provided that a duplicate copy is sent contemporaneously by one of the other methods described in this **Section 21(A)**), (c) on the next business day following the date such notice is deposited with a nationally recognized overnight delivery service, or (d) three business days following mailing, if such notice is sent via United States mail, postage prepaid and certified with return receipt requested, in each case to the appropriate address(es) set forth below (or to such other address as a party may designate from time to time by notice to the other party):

Buyer: Fort Wayne Redevelopment Commission
Attn: Executive Director
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
Jonathan.Leist@cityoffortwayne.org

With a copy to:

Thomas B. Trent
Rothberg Logan Warsco LLP
505 East Washington Boulevard
P.O. Box 11647
Fort Wayne, Indiana 46859
ttrent@rothberg.com

Seller: Schaab Metal Products Inc.
Attn: Brian Depew
1216 North Harrison Street
Fort Wayne, IN, 46808, USA
Briand@schaabmetals.com

With a copy to:

Pat Hess
Beckman Lawson, LLP
201 West Wayne Street
Fort Wayne, IN 46802
phess@beckmanlawson.com

- B. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and the jurisdiction and venue with respect to any disputes arising hereunder will be proper only in the city or county in which the Property is located.
- C. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and assigns. Buyer may, without the consent of Seller, assign its rights under this Agreement to a third party at any time on or before the Closing Date.
- D. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- E. Aside from the Lease, this Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the transaction and cannot be changed except by their written consent.
- F. Time is of the essence of this Agreement.
- G. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa unless the context requires otherwise.
- H. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement. The parties agree that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.
- I. The provisions of this Agreement and of the documents to be executed and delivered at the Closing are and will be for the benefit of Seller and Buyer (and Buyer's assigns, if any) only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at the Closing.
- J. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.
- K. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Agreement falls on a Saturday, Sunday or federal legal holiday, then such date will be extended to the next following date which is not a Saturday, Sunday or federal legal holiday.

23. **PROFESSIONAL FEES:** Seller and Buyer represent to each other that no brokers are involved in this transaction except for BND Commercial, Attn: David Nugent (the "Broker") on behalf of Seller. Seller and Buyer shall indemnify each other from claims of any other third parties claiming a fee or other compensation for brokerage or other similar services to have been rendered for Seller or Buyer.

24. **EXCLUSIVE RIGHTS:** Seller and Seller's agents shall refrain from all further marketing efforts for the Property and shall not accept or entertain offers, negotiate, solicit interest, or otherwise enter into discussions involving the sale, recapitalization, restructuring, or disposition of all or any part of the Property, until the termination of this Agreement.

25. **JUDICIAL INTERPRETATION:** Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not construe this Agreement against one party more strictly by reason of the rule of interpretation that a document is to be construed more strictly against the party that prepared the same, it being agreed that the agents of each party have participated in the preparation of this Agreement and that each party

thereto consulted with independent legal counsel of its own selection or had the opportunity to consult with such legal counsel prior to the execution of this Agreement.

26. **WAIVER OF CONSEQUENTIAL DAMAGES.** Notwithstanding any provision in this Agreement to the contrary, neither party will be liable to the other party for consequential damages, such as lost profits or interruption of the other party's business, except that this sentence will not apply to Seller's breach of its confidentiality obligations under this Agreement.
27. **COOPERATION FOR EXCHANGE:** If Seller desires to complete a like-kind exchange under Section 1031 of the Internal Revenue Code in connection with the transaction contemplated herein, Buyer agrees to reasonably cooperate in accomplishing the same
28. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER AND BUYER WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN OR AMONG SELLER AND BUYER ARISING OUT OF THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

BUYER:

THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF
REDEVELOPMENT, ACTING BY AND THROUGH THE
FORT WAYNE REDEVELOPMENT COMMISSION

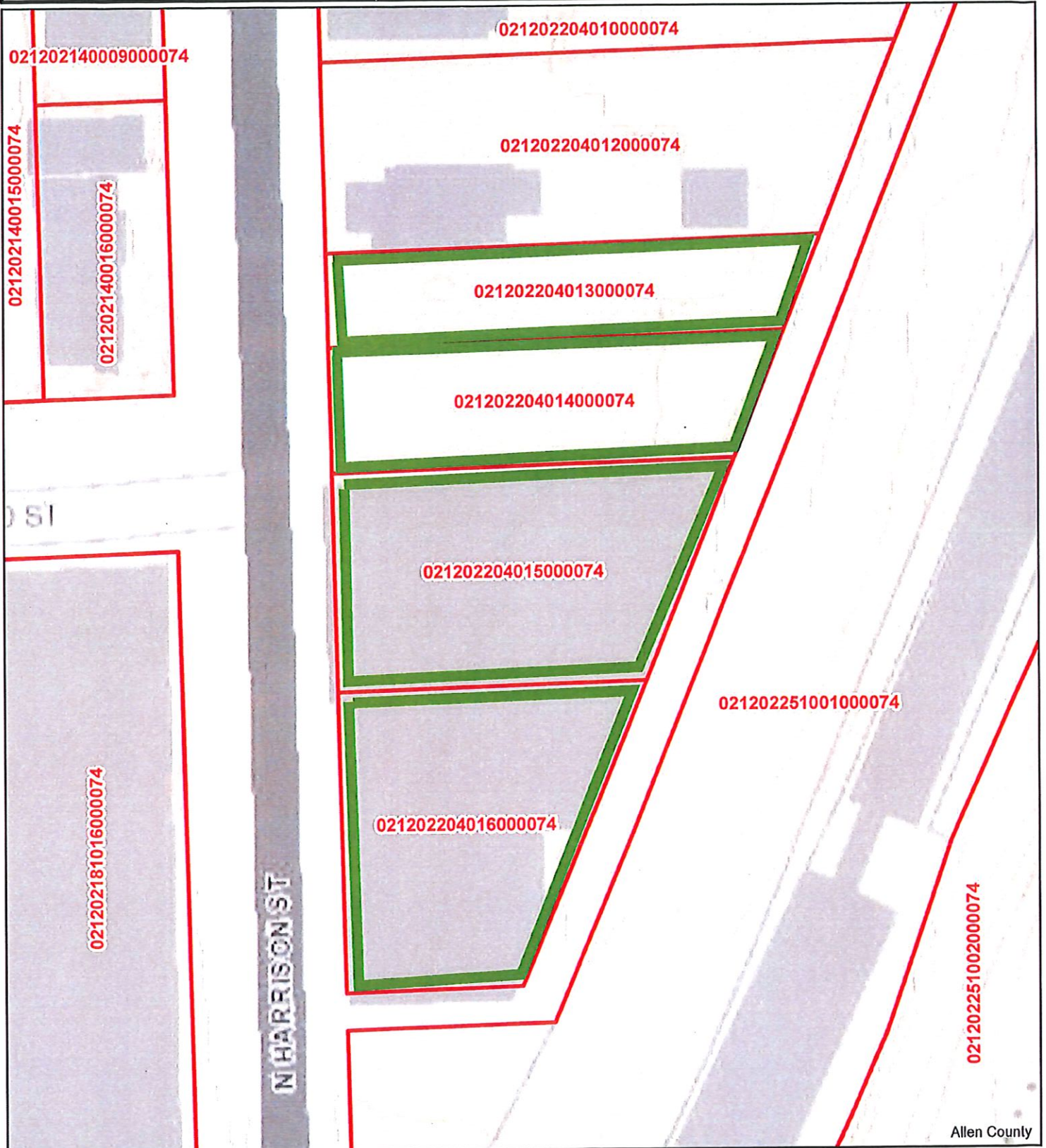
By: _____
Jonathon Leist
Executive Director

SELLER:

SCHAAB METAL PRODUCTS INC.

By: _____

Exhibit A



Allen County

Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East



Date: 3/10/2022

1" = 42'

DIGEST SHEET

TITLE OF RESOLUTION. A Resolution of the Common Council of the City of Fort Wayne, Indiana, regarding the approval of the appropriation of available local income tax revenues to pay for the acquisition by the Fort Wayne Redevelopment Commission of land and improvements deemed necessary for further expansion of the Riverfront Development plans of the City of Fort Wayne (Schaab Metal Products Inc.)

DEPARTMENT REQUESTING RESOLUTION. Redevelopment Commission.

SYNOPSIS OF RESOLUTION. Fort Wayne Redevelopment Commission is asking for approval of the expenditure of \$1,726,580 of the budgeted LIT Riverfront – Property Acquisition funds to acquire approximately .58 acres of property currently owned by Schaab Metal Products, Inc. The property is located on the east side of Harrison Street (1216-1306 N Harrison St.) and is immediately adjacent to Riverfront Phase II Public Space along the Saint Mary's River. This is a critical acquisition to allow greater flexibility for the construction and design of this key section of Riverfront Phase II Public Space and for the attraction of future private development complimentary to the proposed public space.

EFFECT OF PASSAGE. Passage of the resolution will give the Department of Redevelopment the ability to acquire a key piece of real estate located in the Riverfront district, adjacent to Riverfront Phase II public space. With this acquisition, the City of Fort Wayne will be able to begin the process of attracting a complimentary private development adjacent to Riverfront Phase II Public Space, a unique location with spectacular views of downtown and riverfront and allow us to continue the next phase of successful public-private partnerships along the Riverfront.

EFFECT OF NON-PASSAGE. Without this key piece of real estate, the City will be unable to attract private investment and redevelopment of the site, and it will continue to be used for a light industrial use with forklifts and semi-trailer traffic rather than a commercial or mixed-use building that fits with current riverfront planning and complements proposed Riverfront Phase II Public Space.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). \$1,726,580.00 (purchase price necessary to facilitate relocation) of LIT Riverfront funds – Property Acquisition budget line item.

ASSIGNED TO COMMITTEE (PRESIDENT). _____



COMMUNITY DEVELOPMENT REDEVELOPMENT

Thomas C. Henry, Mayor

City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne, IN 46802

260-427-2150 fwcommunitydevelopment.org

March 17, 2022

MEMO

To: City of Fort Wayne Common Council
Copy: City of Fort Wayne Redevelopment Commission
From: Jonathan Leist, Executive Director, 427-1323
Re: **Resolution approving property acquisition - Riverfront**

This memo requests Common Council approval of a resolution authorizing the expenditure of \$1,726,580 of LIT Riverfront funds from the Property Acquisition budget line item to acquire 1216, 1228, 1302, and 1306 N Harrison Street, which are adjacent real estate parcels totaling approximately .58 acres, and which currently accommodate Schaab Metals Products, Inc.

Enclosed herewith, please find a digest sheet and a resolution approving the property acquisition of the parcels listed above by and through the Redevelopment Commission with the approved LIT funds.

Acquisition of this real estate is integral to the implementation the City's plans for redevelopment surrounding Riverfront Phase II Public Space as it is located in the heart of the planned Riverfront Phase II public space improvements on the north side of the St. Mary's River. Public amenities included as part of Phase II include an extension of the urban trail, walking paths, a new section of Treetop Canopy Trail, scenic overlooks, river access points, a public amphitheater, and boat docks.

Although acquisition of this real estate has been anticipated for some time, since the acquisition of the former Norfolk Southern railroad corridor by the City in late 2020, it has become increasingly apparent that the proposed Riverfront Phase II public space uses are incompatible with the ongoing operations of Schaab Metal Products, Inc. at this location. Specifically, the metal storage buildings located at 1208 N Harrison on the former railroad corridor property are within the footprint of the Phase II public space improvements, but are currently leased from the City by Schaab, and are critical to their business operations.

The value of this property acquisition is reflective of the actual costs of facilitating the relocation of the Schaab business and equipment to an industrial building in the City of Fort Wayne of similar size, appropriate zoning, comparable condition, and with similar features. The appraisal of the new proposed facility for Schaab Metals on Wallace Street was \$1.3 million. The purchase price also reflects estimated moving costs (\$203,606) and building improvements (\$234,224). The higher of our two appraisals valued their Harrison Street location at \$420,000.

If you have any questions about the proposed acquisition, please contact me at 427-1323 or jonathan.leist@cityoffortwayne.org.

Vibrant. Prosperous. Growing.

