

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF
FORT WAYNE, INDIANA, APPROVING A LEASE FOR CERTAIN
PUBLIC IMPROVEMENTS BETWEEN THE CITY OF FORT WAYNE
REDEVELOPMENT AUTHORITY AND THE CITY OF
FORT WAYNE REDEVELOPMENT COMMISSION,
AND REGARDING CERTAIN RELATED MATTERS**

WHEREAS, on June 13, 2022, after holding a public hearing, the City of Fort Wayne Redevelopment Commission (the "Commission") adopted its Resolution approving a proposed lease (the "Lease") between the City of Fort Wayne Redevelopment Authority (the "Authority") and the Commission for certain land and public improvements and infrastructure consisting of all or any portion of the following: (i) Promenade Park, (ii) the Harrison Street Bridge, and (iii) the Ewing Street Bridge (the "Public Improvements"), and finding, pursuant to Indiana Code 36-7-14.5-14, that the rental payments to be paid by the Commission to the Authority pursuant to the Lease, at a rate not exceeding Three Million One Hundred Thousand Dollars (\$3,100,000) per year in semiannual installments, for a Lease term not to exceed twenty-two (22) years, beginning not earlier than the first June 1 or December 1 through the expiration of the Lease, are fair and reasonable, and finding, pursuant to Indiana Code 36-7-14-25.2, that the lease and the use of the Public Improvements throughout the term of the Lease will serve the public purpose of the City of Fort Wayne, Indiana (the "City") and is in the best interests of its residents; and

WHEREAS, the Authority, at its meeting on June 6, 2022, adopted its Resolution approving the proposed Lease and expressing its intent to issue lease rental revenue bonds (the "Bonds") payable from lease rentals due under the Lease; and

WHEREAS, the Common Council of the City (the "Common Council") desires to approve the Lease, pursuant to Indiana Code 36-7-14-25.2, which requires that any lease approved by a resolution of the Commission must be approved by the Common Council, as the fiscal body of the City; and

WHEREAS, the Common Council desires to approve the issuance of the Bonds pursuant to Indiana Code 36-7-14.5-19; and

WHEREAS, the Commission has requested, for so long as the Lease remains in effect, the pledge of local income tax revenues legally available to the City and allocated to economic development pursuant to Indiana Code 6-3.6 ("EDIT Revenues" or "LIT Revenues") for the payment of lease rentals due under the Lease; and

WHEREAS, the City has previously pledged the EDIT Revenues to certain outstanding bonds, leases and other obligations, including (a) the pledge of up to \$1,065,000 of EDIT Revenues by the City pursuant to Ordinance No. S-20-06, adopted by the Common Council on February 28, 2006 (the "2006 Lease Ordinance"), for the payment of lease rentals pursuant to a lease between the City and the Fort Wayne Municipal Building Corp. (the "Building Corporation") dated as of February 1, 2006, as amended (the "2006 Lease"), which lease rentals are used to pay bonds designated "Fort

Wayne Municipal Building Corp. First Mortgage Revenue Bonds, Series 2006," currently outstanding in the aggregate principal amount of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000) with a final maturity date of December 15, 2022; (b) the pledge of EDIT Revenues by the City pursuant to Ordinance No. S-100-09, adopted by the Common Council on October 13, 2009 (the "2009 Lease Ordinance"), for the payment of lease rentals pursuant to a lease between the City and the Building Corporation dated as of September 1, 2009, as amended (the "2009 Lease"), which lease rentals are used to pay bonds designated "Fort Wayne Municipal Building Corp. First Mortgage Refunding Revenue Bonds, Series 2020 (City Hall Project)," currently outstanding in the aggregate principal amount of Seven Million Two Hundred Thousand Dollars (\$7,200,000) with a final maturity date of December 15, 2029; (c) the pledge of EDIT Revenues by the City (to the extent pledged) pursuant to an Ordinance adopted by the Common Council related to the 2012 Lease (as hereinafter defined) (the "2012 Lease Ordinance"), for the payment of lease rentals pursuant to a lease between the Commission and the Authority dated as of December 1, 2002, as amended (the "2012 Lease"), which lease rentals are used to pay bonds designated "City of Fort Wayne Redevelopment Authority Lease Rental Revenue Refunding Bonds, Series 2022 (Grand Wayne Center Project)," currently outstanding in the aggregate principal amount of Ten Million Two Hundred Twenty Thousand Dollars (\$10,220,000) with a final maturity date of February 1, 2028; (d) the pledge of EDIT Revenues by the City pursuant to Ordinance No. S-74-18, adopted by the Common Council on July 24, 2018 (the "2019 Bond Ordinance"), for the payment of principal and interest on the bonds designated "City of Fort Wayne, Indiana, Local Income Tax Refunding Revenue Bonds, Series 2019A and Series 2019B" (collectively, the "2019 Bonds"), currently outstanding in the combined aggregate principal amount of Sixteen Million Eight Hundred Forty Thousand Dollars (\$16,840,000) with a final maturity date of June 1, 2034; and (e) the pledge of EDIT Revenues by the City pursuant to Resolution No. R-11-20, adopted by the Common Council on March 10, 2020 (the "2022 Lease Resolution," and together with the 2006 Lease Ordinance, the 2009 Lease Ordinance, the 2012 Lease Ordinance, the 2019 Bond Ordinance and any other or different authorizing instruments pledging EDIT Revenues to outstanding obligations, the "Prior Authorizing Instruments"), for the payment of lease rentals pursuant to a Parking Structure Lease Agreement by and among Fort Wayne Garage Associates, Two, LLC, Summit Development Corp. and the City of Fort Wayne, Indiana, Department of Redevelopment dated as of February 5, 2022 (the "2022 Lease," and together with the 2006 Lease, the 2009 Lease, the 2012 Lease, the 2014 Lease, the 2019 Bonds and any other or different outstanding obligations to which EDIT Revenues have been pledged, the "Outstanding EDIT Obligations"); and

WHEREAS, pursuant to the Prior Authorizing Instruments, the City has reserved the right to authorize and issue additional bonds or other obligations payable out of the EDIT Revenues, ranking on a parity with the pledge of the EDIT Revenues to the Outstanding EDIT Obligations, provided that certain conditions can be met;

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

As required by Indiana Code 36-7-14-25.2(c), the Common Council hereby sets forth the following terms and other matters related to the Lease:

1 The maximum annual lease rental for the Lease is Three Million One
2 Hundred Thousand Dollars (\$3,100,000).

3 The maximum term of the Lease is twenty-two (22) years, commencing
4 on the date of the first lease rental payment due on the Lease.

5 The other terms required by Indiana Code 36-7-14-25.2(c)(2) are set forth
6 in paragraph 3 of this Resolution.

7 The Common Council hereby approves the transactions regarding the Public
8 Improvements and hereby approves the Lease, as approved by the Commission and the
9 Authority, pursuant to Indiana Code 36-7-14-25.2, in substantially the form provided at
10 this meeting and attached hereto as Exhibit A.

11 To the extent required by Indiana Code 36-7-14.5-19(a), the Common Council
12 hereby sets forth the following terms and other matters related to the Bonds:

13 The public purpose of the Bonds is to acquire the Public Improvements,
14 for the ultimate purpose of providing funding for the acquisition, demolition, site
15 preparation, construction, installation and equipping of improvements in the
16 vicinity of Promenade Park, consisting of the creation of at-grade trails, elevated
17 trails, a wetland boardwalk, new boat docks, gathering places and related
18 improvements

19 The proceeds of the Bonds will be used to (a) finance the acquisition of
20 the Public Improvements (for the ultimate purpose as described in paragraph 3(a)
21 of this Resolution), (b) fund all or a portion of a debt service reserve fund (or pay
22 for the costs of a reserve fund surety bond therefor), as necessary, and (c) pay
23 certain financing and other expenses incidental thereto, including all expenses
24 incurred in connection with or on account of the issuance of the Bonds therefor.

25 The maximum principal amount of the Bonds is Thirty-Five Million
26 Dollars (\$35,000,000).

27 The Bonds shall mature not later than twenty (20) years after the date of
28 issuance of the Bonds.

29 The Bonds shall bear interest either (i) at a tax-exempt rate or rates not
30 exceeding six percent (6.0%) per annum, or (ii) at a taxable rate or rates not
 exceeding seven percent (7.0%) per annum.

 The Bonds may be subject to optional redemption prior to maturity
 beginning on a date approximately not earlier than five (5) years from the date of
 issuance of the Bonds. All or a portion of the Bonds may further be issued as
 "term bonds" subject to mandatory sinking fund redemption.

 The Authority expects that it will not capitalize interest on the Bonds.

 The Common Council hereby approves of the issuance of the Bonds by the
 Authority, pursuant to Indiana Code 36-7-14.5-19(a). To the extent required by Indiana
 Code 36-7-14.5-18 and Indiana Code 36-7-14.5-21, the Common Council further

1 approves the purchase of the Public Improvements by the Authority and the entering into
2 a trust indenture between the Authority and a corporate trustee pursuant to which the
3 lease rentals due under the Lease will be pledged and assigned as security for the
4 payment of the Bonds.

5 Pursuant to and in accordance with Indiana Code 5-1-14-4 and 6-3.6-10-6, the
6 Common Council does hereby pledge the EDIT Revenues to the payment of the lease
7 rentals due under the Lease for so long as the Lease remains in effect. The pledge of the
8 EDIT Revenues to the payment of lease rentals due under the Lease shall rank on a parity
9 with the pledge of the EDIT Revenues to the payment of the Outstanding EDIT
10 Obligations.

11 The City reserves the right to authorize and issue additional bonds and to
12 authorize and incur lease obligations (collectively, the "Parity Obligations"), payable
13 from the EDIT Revenues, ranking on a parity with the pledge of the EDIT Revenues to
14 the payment of the lease rentals due under the Lease and the Outstanding EDIT
15 Obligations, for any legally authorized purpose, provided that the authorization and
16 issuance of Parity Obligations shall be subject to the conditions precedent set forth in
17 Section 20 of the 2019 Bond Ordinance, which Section 20 is incorporated in this
18 Resolution by reference.

19 This Resolution is adopted and the pledge of EDIT Revenues are made pursuant
20 to Indiana Code 5-1-14-4, and once the Bonds are issued, this Resolution shall not be
21 repealed or amended in any manner which would serve to adversely affect the pledge of
22 EDIT Revenues set forth herein.

23 The Mayor, the Controller and the Clerk of the City are hereby authorized and
24 directed to take all such further action or execute and/or attest such agreements,
25 instruments or documents as are necessary or appropriate to effectuate this Resolution.

26 This Resolution shall be in full force and effect from and after passage by the
27 Common Council.

28
29
30

Council Member

APPROVED AS TO FORM AND LEGALITY:

Malak Heiny, City Attorney

EXHIBIT A
FORM OF LEASE

(see attached)

LEASE

Between

**CITY OF FORT WAYNE
REDEVELOPMENT AUTHORITY**

and

**CITY OF FORT WAYNE
REDEVELOPMENT COMMISSION**

DATED AS OF _____ 1, 2022

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LEASE

This Lease (the "Lease") entered into as of the 1st day of _____, 2022, between the CITY OF FORT WAYNE REDEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under Indiana Code 36-7-14.5 (the "Authority") and the CITY OF FORT WAYNE REDEVELOPMENT COMMISSION, the governing body of the City of Fort Wayne, Indiana Department of Redevelopment and the Redevelopment District of the City of Fort Wayne, Indiana (the "Lessee"), acting for and on behalf of the City of Fort Wayne, Indiana,

WITNESSETH:

Section 1. Definitions. The terms defined in this Section 1 shall for all purposes of this Lease have the meanings herein specified unless the context otherwise requires.

"Act" means Indiana Code 36-7-14.5, as the same from time to time may be amended or supplemented.

"Authority" means the City of Fort Wayne Redevelopment Authority, a body corporate and politic organized and existing under the Act, or if said Authority shall be abolished, the authority, board, body, instrumentality or agency succeeding to the principal functions thereof.

"Bonds" means the City of Fort Wayne Redevelopment Authority Lease Rental Revenue Bonds of 2022 (Riverfront Phase II Project) (provided that the designation of the Bonds may be changed if such Bonds are issued in a calendar year after 2022).

"Lease" means this Lease as the same may be amended, modified or supplemented by any amendments or modifications hereof or supplements hereto entered into in accordance with the provisions hereof.

"Lease Payment Account" means the account by that name created by the Lease Resolution.

"Lease Resolution" means the resolution of the Lessee establishing funds for the payment of lease rentals.

"Leased Premises" means the real estate (including all right-of-way easements contained therein) located in Allen County, Indiana, all as described in Exhibit B attached hereto.

"Lessee" means the City of Fort Wayne Redevelopment Commission, the governing body of the City of Fort Wayne, Indiana Department of Redevelopment and the Redevelopment District of the City of Fort Wayne, Indiana, or if said Commission shall be abolished, the commission, board, body or agency succeeding to the principal functions thereof.

"Permitted Encumbrances" means those items listed in Exhibit A attached hereto and any future (a) liens for taxes not then delinquent, (b) this Lease and the Trust Indenture, leases, subleases and other agreements permitted pursuant to Section 13 hereof, (c) utility, access and other easements and rights-of-way, restrictions and exceptions that the Lessee certifies will not interfere with or impair the Leased Premises, (d) any mechanics', laborers', materialmen's, suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable, and (e) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as do not, in the opinion of the Trustee, materially impair the Authority's title or Lessee's use of the Leased Premises.

"Trust Indenture" means the Trust Indenture to be dated as of the first day of the calendar month in which the Bonds are delivered to the purchaser or purchasers thereof, between the Authority and the Trustee, securing the Bonds.

"Trustee" means the financial institution selected to serve as trustee pursuant to the Trust Indenture, and any successor trustee.

Any term not defined herein, which is defined in the Lease Resolution or in the Trust Indenture, shall have the meaning as defined in such resolution or agreement.

Section 2. Lease of Leased Premises. In consideration of the rentals and other terms and conditions herein specified the Authority does hereby lease, demise and let to the Lessee the Authority's interest in the Leased Premises: TO HAVE AND TO HOLD the same with all rights, privileges, easements and appurtenances thereunto belonging, unto the Lessee for a term not to exceed twenty-two (22) years, beginning on the first June 1 or December 1 after the Bonds are issued, and ending on the day not later than twenty-two (22) years thereafter. However, the term of this Lease shall terminate at the earlier of (a) the exercise of the option to purchase by the Lessee and payment of the option price, or (b) the payment or defeasance of all obligations of the Authority incurred (i) to finance the cost of the leased property, (ii) to refund such obligations, or (iii) to refund such refunding obligations. The Authority hereby represents that it is possessed of, or will acquire, a good and indefeasible estate in fee simple, leasehold interest, or an insurable right-of-way easement subject only to Permitted Encumbrances, to the above-described real estate, and the Authority warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of the Lessee.

Notwithstanding the foregoing, the Leased Premises may be modified to add additional property to the Leased Premises or remove any portion of the Leased Premises, provided, however, following such modification, the rental payable under this Lease shall be based on the value of the portion of the Leased Premises which is available for use, and the rental payments due under this Lease shall be in amounts sufficient to pay when due all principal of and interest on all outstanding Bonds. In the event that all or a portion of the Leased Premises shall be unavailable for use by the Lessee, the Authority and the Lessee shall amend the Lease to add to and/or replace a portion of the Leased Premises to the extent necessary to provide for available Leased Premises with a value supporting rental payments under the Lease sufficient to pay when due all principal of and interest on all outstanding Bonds.

Section 3. Rental Payments. (a) During the term of this Lease, the Lessee agrees to pay rental for said premises as set forth in Section 4 hereof. Such rental shall be paid from the Lease Payment Account. All rentals payable under the terms of this Lease shall be paid to the Trustee or to such other bank or trust company as may from time to time succeed the Trustee under the Trust Indenture. All payments so made shall be considered as payments to the Authority of the rentals payable hereunder. The Lessee shall receive credit for any Bond maturing within seven (7) days of the date of the lease rental payment, at the face value thereof, which the Lessee acquires and delivers to the Trustee as a part of its lease rental payment.

(b) As additional rental the Lessee agrees to pay all fees, charges and reimbursement of expenses of the Trustee under the Trust Indenture, taxes and assessments levied against or on account of the Leased Premises (as provided in Section 6 hereof), and all prudent charges and expenses of the Authority incurred in the performance of its obligations hereunder. The Lessee shall also pay as an additional rental the amount calculated by or for the Authority as the amount, if any, required to be rebated, or paid as a penalty, to the United States of America under Section 148(f) of the Internal Revenue Code of 1986, as amended and in effect on the date of issue of the Bonds (the "Code"), after taking into account other available moneys, to prevent the Bonds from becoming arbitrage bonds under Section 148 of the Code.

Section 4. Rental Payment Dates and Amounts. The Lessee agrees to pay rent to the Authority at an annual rental of Three Million One Hundred Thousand Dollars (\$3,100,000), subject to the provisions of this Section 4. The first semiannual rental installment in the amount of One Million Five Hundred Fifty Thousand Dollars (\$1,550,000) shall be due on the first June 1 or December 1 after the issuance of the Bonds. Thereafter such rentals shall be payable in advance in semiannual installments of One Million Five Hundred Thousand Dollars (\$1,500,000) on June 1 and December 1 of each year. The last semiannual rental payment due before the expiration of this Lease shall be adjusted to provide for rental at the amount specified above for the applicable semiannual period prorated from the date such installment is due to the date of the expiration of this Lease (without taking into account any subsequent early termination of this Lease pursuant to Section 2 hereof).

After the sale of the Bonds issued by the Authority to pay the cost of the acquisition of the property therefor and other expenses incidental thereto, the annual rental installments shall be reduced to an amount equal to the multiple of One Thousand Dollars (\$1,000) next highest to the sum of principal and interest due in each Bond year ending on each December 15 plus Five Thousand Dollars (\$5,000), payable in equal semiannual installments on June 1 and December 1. Such amount of reduced annual rental shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after the sale of said Bonds, and such endorsement shall be recorded as an addendum to this Lease.

The Lessee will not take any action or fail to take any action that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the Bonds pursuant to Section 103(a) of the Code, nor will the Lessee act in any manner which would adversely affect such exclusion. The Lessee further covenants that it will not make any investment or do any other act or thing during the period that any Bond is outstanding hereunder which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code and the

regulations thereunder as in effect on the date of delivery of the Bonds. All officers, members, employees and agents of the Lessee are authorized and directed to provide certifications of facts and estimates that are material to the reasonable expectations of the Lessee as of the date the Bonds are issued and to enter into covenants on behalf of the Lessee evidencing the Lessee's commitments made herein.

Section 5. Abatement of Rent. If any part of the Leased Premises shall be partially or totally destroyed, so as to render it unfit, in whole or part, for use by the Lessee, the rent shall be abated for the period during which the Leased Premises or such part thereof is unfit or unavailable for use, and the abatement shall be in proportion to the percentage of the Leased Premises which is unfit or unavailable for use. The parties have agreed in Section 2 hereof to add to and/or replace all or a portion of the Leased Premises as necessary so that the Leased Premises remains available for use by the Lessee.

Section 6. Net Lease. It is expressly understood and agreed that this Lease shall be what is known as a net lease (*i.e.*, the rent being absolutely net to the Authority and that all other expenses in connection with the Leased Premises of any nature whatsoever shall be those of the Lessee) and that during the lease term the Lessee shall be obligated to pay as its expenses without reimbursement from the Authority all costs of taxes and assessments, if any, and maintenance, operation and use in connection with or relating to the Leased Premises, including, but not limited to, all costs and expenses of all services, repair or replacement of all parts of the Leased Premises or improvements of the Leased Premises.

Section 7. Nonliability of Authority. The Authority shall not be liable for damage caused by hidden defects or failure to keep the Leased Premises in repair and shall not be liable for any damage done or occasioned by or from plumbing, gas, water or other pipes or the bursting or leaking of plumbing or heating fixtures in connection with said premises, nor for damage occasioned by water, snow or ice. The Authority shall not be liable for any injury to the Lessee or any sublessee of the Lessee or any other person which injury occurs on, in or about the Leased Premises howsoever arising. The Authority shall not be liable for damage to the Lessee's property or to the property of any sublessee of the Lessee or of any other person which may be located in, upon or about the Leased Premises.

Section 8. Alterations. The Lessee shall have the right, without the consent of the Authority, to make all alterations, modifications and additions and to do all improvements it deems necessary or desirable to the Leased Premises, which do not reduce the rental value of the Leased Premises.

Section 9. Liability Insurance. The Lessee shall, at all times during the full term of this Lease, keep in effect, public liability and property damage insurance, insuring the Lessee, the Authority and the Trustee in amounts customarily carried for similar properties.

Section 10. General Insurance Provisions. All insurance policies required by Section 9 hereof shall be with insurance companies rated B+ or better by A.M. Best Company (or a comparable rating service if A.M. Best Company ceases to exist or rate insurance companies), and shall be countersigned by an agent of the insurer who is a resident of the State

of Indiana, and such policies, or copies thereof, shall be deposited with the Authority and, if requested by the Trustee, with the Trustee. If, at any time, the Lessee fails to maintain insurance in accordance with Section 9 hereof, such insurance may be obtained by the Authority, or may be obtained by the Trustee, and the amount paid for such insurance shall be added to the amount of rental payable by the Lessee under this Lease; provided, however, that neither the Authority nor the Trustee shall be under any obligation to obtain such insurance, and any action or non-action of the Authority or Trustee in this regard shall not relieve the Lessee of any consequences of a default in failing to obtain such insurance. Notwithstanding the foregoing, the insurance required by Section 9 hereof may be insured under the City of Fort Wayne's existing insurance policies or under self-insurance, if any, to the extent that such insurance is permitted by law.

Section 11. General Covenants. The Lessee shall not assign this Lease. The Lessee covenants that, except for Permitted Encumbrances, it will not encumber the Leased Premises, or permit any encumbrance to exist thereon, and that it shall use and maintain the Leased Premises in accordance with the laws and ordinances of the United States of America, the State of Indiana and all other proper governmental authorities. The Authority agrees that it will, at the request of the Lessee, execute and deliver to or upon the order of the Lessee such instrument or instruments as may be reasonably required by the Lessee in order to subject the Leased Premises, or the Authority's interest therein, to such encumbrances as shall be specified in such request and as shall be permitted by the provisions of this Section 11 or otherwise by the definition of "Permitted Encumbrances."

Section 12. Option to Purchase. The Authority hereby grants the Lessee the right and option, on any date prior to the expiration of the Lease, upon thirty (30) days' written notice to the Authority, to purchase the Leased Premises at a price equal to the amount required to enable the Authority to provide for the redemption of all outstanding Bonds, all premiums payable on the redemption thereof, and accrued and unpaid interest, and to pay the cost of redeeming the Bonds.

Upon request of the Lessee, the Authority agrees to furnish an itemized statement setting forth the amounts required to be paid by the Lessee on the next rental payment date in order to purchase the Leased Premises in accordance with the preceding paragraph.

If the Lessee exercises its option to purchase, the Lessee shall pay to the Trustee that portion of the purchase price which is required to provide for the payment of all the Bonds, including all premiums payable on the redemption thereof, accrued and unpaid interest thereon and the costs of redemption thereof. Such payment shall not be made until the Trustee gives to the Lessee a written statement that such amount will be sufficient to retire all Bonds, including all premiums payable on the redemption thereof and accrued and unpaid interest.

The remainder of such purchase price, if any, shall be paid by the Lessee to the Authority. Nothing herein contained shall be construed to provide that the Lessee shall be under any obligation to purchase the Leased Premises, or under any obligation in respect to any creditors or bondholders of the Authority.

If the Lessee has not exercised its option to purchase the Leased Premises at the expiration of the term of the Lease and upon the full discharge and performance by the Lessee of its obligations under this Lease, the Authority shall execute a deed of the Leased Premises to the Lessee conveying good and merchantable title thereto, subject only to Permitted Encumbrances.

Section 13. Defaults. If the Lessee shall (a) default in the payment of any rentals or other sums payable to the Authority hereunder, or in the payment of any other sum herein required to be paid to the Authority, (b) fail to comply with the terms set forth in the Lease Resolution, or (c) default in the observance of any other covenant, agreement or condition hereof, and such default shall continue for ninety (90) days after written notice to correct the same, then, in any of such events, the Authority may proceed to protect and enforce its rights, either at law or in equity, by suit, action, mandamus or other proceedings, whether for specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy.

Section 14. Notices. Whenever either party shall be required to give notice to the other under this Lease, it shall be sufficient service of such notice to deposit the same in the United States mail, in an envelope duly stamped, registered and addressed to the other party at its last known place of business. A copy of any notice shall be mailed by first-class mail to the Trustee at its last known place of business.

Section 15. Construction of Covenants. All provisions contained herein shall be construed in accordance with the provisions of the Act and to the extent of inconsistencies, if any, between the covenants and agreements in this Lease and the provisions of the Act, the provisions of said Act shall be deemed to be controlling and binding upon the parties.

Section 16. Successors or Assigns. All covenants of this Lease, whether by the Authority or the Lessee, shall be binding upon the successors and assigns of the respective parties hereto.

* * * * *

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

CITY OF FORT WAYNE
REDEVELOPMENT AUTHORITY

By: _____
John Powell, President

ATTEST:

Irene Walters, Secretary-Treasurer

CITY OF FORT WAYNE
REDEVELOPMENT COMMISSION

By: _____
Christopher Guerin, President

ATTEST:

Nathan Hartman, Secretary

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Scott E. Peck

This instrument was prepared by Scott E. Peck, FAEGRE DRINKER BIDDLE & REATH LLP, 300 North Meridian Street, Suite 2500, Indianapolis, Indiana 46204.

EXHIBIT A

PERMITTED ENCUMBRANCES

The standard encumbrances and exceptions to the title as would be set forth on a Policy of Title Insurance covering the real estate and improvements thereon which are subject to the Lease.

EXHIBIT B

LEASED PREMISES DESCRIPTION

[To be inserted]

US.350384183.01

DIGEST SHEET

TITLE OF RESOLUTION. A Resolution of the Common Council of the City of Fort Wayne, Indiana, Approving a Lease for Certain Public Improvements Between the City of Fort Wayne Redevelopment Authority and the City of Fort Wayne Redevelopment Commission, and Regarding Certain Related Matters

DEPARTMENT REQUESTING RESOLUTION. Community Development.

SYNOPSIS OF RESOLUTION. This resolution provides certain approvals necessary for the issuance of lease revenue bonds by the City of Fort Wayne Redevelopment Authority for construction of Phase II of Riverfront Public Space and other related matters. The resolution provides, without limitation, the following: (i) authorization to issue the bonds, (ii) approval of a lease between the Redevelopment Authority as lessor and the Redevelopment Commission as lessee for certain public improvements and infrastructure, where annual lease payments will be used to pay principal and interest on the bonds, and (iii) a pledge of LIT revenues as the source of funds for lease payments. The resolution also establishes key terms for the lease and the bonds as required by Indiana Code.

EFFECT OF PASSAGE. Passage of the resolution provides the necessary approvals from the Common Council to proceed with Phase II of Riverfront, which consists of acquisition, demolition, site preparation, construction, installation and equipping of improvements in the vicinity of Promenade Park, consisting of at-grade trails, elevated trails, a wetland boardwalk, new boat docks, gathering places and related improvements. Phase II would be constructed along the central riverfront, from the Ewing Street Bridge to the Martin Luther King, Jr. Bridge. Phase II seeks to extend the revitalization of downtown into the neighborhoods north of the river by catalyzing the creation of new housing, businesses, and entertainment opportunities.

EFFECT OF NON-PASSAGE. Non-passage would put the community's vision for Riverfront in jeopardy, as bonds backed by LIT-Riverfront have been contemplated for several years as the financing mechanism for future phases of Riverfront.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). The maximum principal amount of the bonds is \$35 million. The source of payment for the bonds is LIT-Riverfront.

ASSIGNED TO COMMITTEE (PRESIDENT). _____

June 9, 2022

MEMO

To: City of Fort Wayne Common Council

From: Garry Morr, City Controller

Re: Resolution approving issuance of lease revenue bonds for Phase II of Riverfront

The Controller's Office hereby requests that the Common Council consider and approve the enclosed resolution providing the necessary approvals to issue lease revenue bonds for Phase II of Riverfront Public Space. Please find enclosed a resolution, digest sheet, and supporting materials describing the requested approvals.

The resolution contemplates issuance of lease revenue bonds by the Redevelopment Authority. Common Council approval is required for both the approval of leases and the issuance of bonds. The lease would be between the Fort Wayne Redevelopment Authority, as lessor, and the Redevelopment Commission, as lessee. The Redevelopment Authority approved the form of lease on June 6, 2022 and will consider the bond issuance on July 6, 2022. The Redevelopment Commission will consider the lease on June 13, 2022.

If approved, bonds would be issued and construction would begin later this year, with completion in 2024.