

**BILL NO. R-22-11-13**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE  
COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA,  
APPROVING THE SALE OF LAND  
(RADIO SHOP PROPERTY)**

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WHEREAS, the City of Fort Wayne Board of Public Works (the “Board”), the governing body of the City of Fort Wayne, Indiana, Division of Public Works owns certain real estate located on the northeast corner of East Coliseum Boulevard and Parnell avenue, commonly known as 1103 Coliseum Boulevard, Fort Wayne, IN 46805 (the “Property”) that it wishes to sell to promote an economic development project pursuant to IC 36-1-11-4.2; and

WHEREAS, the Common Council of the City of Fort Wayne, Indiana (the “Council”) is the fiscal body of the City of Fort Wayne, Indiana (the “City”); and

WHEREAS IC 36-1-11-3(c) requires the Council, as fiscal body of the City to approve the sale of real property that has an appraised value of at least fifty thousand dollars (\$50,000); and

WHEREAS, the Board has had the property appraised by two (2) appraisers in accordance with Indiana Code 36-1-11-4.2 and the average of the two appraisals produces a value of the Property of Three Million One Hundred Eighty-Three Thousand Dollars (\$3,183,000.00); and

WHEREAS, Board has received an offer to purchase the Property from Bluestone Single Tenant Properties, LLC (“Bluestone”) for a purchase price of Three Million Three Hundred Fifty Thousand Dollars (\$3,350,000) (“Offer”); and

1 WHEREAS, the Board desires to sell the Property to Bluestone pursuant  
2 to the Offer pursuant to Indiana Code 36-1-11-4.2; and

3 WHEREAS, the Council desires to approve the sale of the Property to  
4 Bluestone in accordance with the Offer pursuant to Indiana Code 36-1-11-3; and

5 WHEREAS, the Board shall publish notice of the amount of the Offer  
6 made by Bluestone for the purchase of the Property in the Fort Wayne Journal Gazette in  
7 accordance with IC 36-1-11-4.2(d) and IC 5-3-1; and

8 WHEREAS, the Board shall also publish notice of a public hearing by the  
9 Board regarding the sale of the Property in the Fort Wayne Journal Gazette accordance  
10 with IC 36-1-11-3(b) and IC 5-3-1; and

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

13 1. The Common Council, in its role as fiscal body of the City,  
14 pursuant to IC 36-1-1-3(c) hereby approves the sale of the Property to Bluestone for the  
15 purchase price of Three Million Three Hundred Fifty Thousand Dollars (\$3,350,000).

16 This Resolution shall be binding and in full force and effect from and after  
17 the time it has been adopted by Common Council, approved by the Mayor and otherwise  
18 executed and delivered in accordance with any and all laws appertaining thereto.

19  
20  
21  
22  
23 \_\_\_\_\_  
24 Council Member

25 APPROVED AS TO FORM AND LEGALITY:

26 \_\_\_\_\_  
27 Malak B. Heiny, City Attorney  
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## REAL ESTATE PURCHASE & SALE AGREEMENT

**THIS AGREEMENT** (this "**Agreement**") is made and entered into to be effective on the date both Seller and Buyer have executed this Agreement (the "**Effective Date**"). Should Seller not execute this Agreement and deliver it to Buyer via email or at the address listed below by 5:00 PM Central Time on August 9, 2022, this Agreement shall be deemed null and void.

(i) City of Fort Wayne, Board of Public Works  
200 East Berry Street  
Suite 470  
Fort Wayne, IN 46802 ("Seller")

and

(ii) Bluestone Single Tenant Properties, LLC  
a Delaware Limited Liability Company  
301 West Grand Avenue, Unit #172  
Chicago, IL 60654 ("Buyer")

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, certain real property according to the terms and conditions contained in this Agreement.

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

- A. Seller shall convey to Buyer a parcel of land located on the northeast corner of East Coliseum Boulevard and Parnell Avenue, commonly known as 1103 East Coliseum Boulevard, Fort Wayne, IN 46805 (PIN: 02-07-25-200-001.000-073) that has not less than 428 feet of frontage on East Coliseum Boulevard and contains approximately 3.68 acres of land area, together with all improvements thereon and appurtenances thereunto belonging, including without limitation, any right, title or interest of Seller in adjoining streets, alleyways, easements or rights-of-way (the "**Property**"). The Property is graphically depicted on Exhibit A-1 attached hereto and made a part hereof. Upon the receipt of the Survey (defined in Section 2 below), Buyer and Seller agree to amend this Agreement to attach a legal description of the Property as Exhibit A-2.
- B. The "**Purchase Price**" shall mean the sum of Three Million Three Hundred Fifty Thousand and no/100 Dollars (\$3,350,000.00). As evidence of its good faith, Buyer shall, within five (5) business days of the Effective Date, deposit Twenty Thousand and no/100 Dollars (\$20,000.00) (the "**Earnest Money Deposit**") with Old Republic National Title Insurance Company, 20 South Clark Street, Suite 2900, Chicago, Illinois 60603 ("Title Company") pursuant to a standard earnest money escrow agreement which shall provide that (i) the Earnest Money Deposit shall apply to the Purchase Price at Closing and, (ii) in the event of termination of this Agreement, the disbursement of funds from the earnest money escrow shall be consistent with the terms of Section 6 hereof.
- C. The "**Closing Date**" shall mean a date selected by Buyer by written notice to Seller and reasonably acceptable to Seller that is not later than thirty (30) days of all contingencies in Section 6 being satisfied or waived by Buyer.

- D. **"Buyer's Intended Use"** of the Property shall mean any retail use that Buyer deems appropriate for the Property.

2. Title & Survey.

- A. Buyer shall order an accurate survey of the Property from a licensed surveyor performed in accordance with ALTA/ACSM and Buyer's standards, in a form acceptable to Buyer and the Title Company ("**Survey**"), showing all easements, appurtenances, encroachments and improvements and containing a legal description of the Property. In addition, Buyer shall order a title commitment issued by the Title Company (the "**Title Commitment**") showing if the Property is subject to any leases, liens, easements, encroachments, charges, defects, parties in possession, contracts or encumbrances or other defect or exception unacceptable to Buyer ("**Title Defects**") other than those exceptions to title listed on Exhibit B attached hereto and made a part hereof (together with any items deemed to be included pursuant to this Section 2.A, the "**Permitted Exceptions**"). Buyer must be satisfied with the Title Commitment and Buyer must be satisfied that there are no Title Defects that are unacceptable to Buyer or which, in Buyer's sole discretion, will adversely affect or interfere with Buyer's Intended Use of the Property. Buyer shall notify Seller, in writing, of Buyer's objections to the status of title to the Property and matters shown on the Survey (collectively, the "**Title and Survey Objections**") prior to the expiration of the Due Diligence Period as defined in Section 6. Any matter to which Buyer does not object in its Title and Survey Objections shall be deemed a Permitted Exception. Seller may, but shall not be required to, cure the Title and Survey Objections; provided, however, in the event Seller elects to cure the Title and Survey Objections, Seller shall use reasonable efforts to cure the Title and Survey Objections within thirty (30) days after Seller receives written notice thereof from Buyer. If Seller refuses or fails to cure any of the Title and Survey Objections to Buyer's reasonable satisfaction, within thirty (30) days after Buyer notifies Seller of the same, in writing, then Buyer may either (i) terminate this Agreement, in which case the Earnest Money Deposit and Extension Deposit shall be immediately refunded to Buyer, or (ii) notify Seller that Buyer deems the uncured Title and Survey Objections to be Permitted Exceptions that shall be included in Exhibit B and proceed with the transaction as contemplated herein. If Buyer does not elect either the foregoing (i) or (ii) within five (5) days of the expiration of Seller's thirty (30) day cure period, Buyer shall be deemed to have elected (ii) and the uncured Title and Survey Objections shall be deemed Permitted Exceptions.
- B. At the Closing, Seller shall convey in fee simple to Buyer good and marketable title to the Property by execution and delivery of a limited or special warranty deed in form and substance satisfactory to Buyer and such that the Title Company will issue its standard American Land Title Association form B Owners Policy (2006), with extended coverage, free and clear of all leases, liens, easements, encroachments, charges, defects, parties in possession, contracts and encumbrances, except the Permitted Exceptions.
- C. Notwithstanding the above and anything contrary in this Agreement, Seller reserves the right, prior to closing, to grant a permanent and exclusive easement over a portion of the Property, as shown on Exhibit C attached hereto, for the existence, maintenance, repair and replacement of a fiber optic junction box. The easement shall be in standard form and shall be subject to Buyer's prior written

approval, which approval Buyer agrees shall not be unreasonably withheld, conditioned or delayed ("Fiber Box Easement").

3. Closing, Possession and Access.

- A. The closing of the sale of the Property in accordance with the terms and conditions of this Agreement (the "Closing") shall be held on the Closing Date at a time and at an office of the Title Company designated by Buyer and reasonably acceptable to Seller. At Closing, Buyer shall deliver to Seller the balance of the Purchase Price, less the amount of the Earnest Money Deposit, any paid Extension Deposit (as defined herein), plus or minus prorations. Seller shall pay all real estate ad valorem taxes assessed on the Property that are due prior to Closing. All such taxes that have accrued but are not yet due shall be prorated between Seller and Buyer as of the Closing Date based on one hundred five percent (105%) of the most recent ascertainable taxes. Seller shall also pay for the title policy with extended coverage from the Title Company in the amount of the Purchase Price, all state, county and municipal transfer taxes for the deed, recording fees for any releases and its attorneys' fees and, if the Closing occurs, Seller shall pay one half of the Title Company's closing fees and reimburse Buyer for the cost of the Survey. Buyer shall pay the recording fee for the deed and its attorneys' fees and, if the closing occurs, one half of the Title Company's closing fees. Title commitment and escrow fees shall be split evenly between Buyer and Seller.
- B. At the Closing, Seller shall deliver such affidavits and certifications, as Buyer or the Title Company shall reasonably request in connection with the Closing and the issuance of Buyer's Owner's Policy of Title Insurance by the Title Company, including, without limitation, the Title Company's standard owner's lien affidavit and/or gap indemnity/undertaking. Possession of the Property shall be delivered coincident with the Closing.
- C. Prior to the Closing Date, Buyer, its nominees and agents, shall have the right to enter upon the Property at any time and at their own risk and sole liability to make any inspections, tests, examinations, and surveys of the Property, including without limitation the performance of geotechnical and/or environmental testing (including the performance of any Phase I or Phase II invasive testing [as and if applicable] subject to the terms of Section 3.E) to determine the suitability of the Property for Buyer's Intended Use and operation thereof; provided, however, such inspections, tests, examinations and surveys shall not unreasonably interfere with the use of the Property by Seller. Within five (5) days following the Effective Date, Seller will, to the extent in Seller's possession, deliver to Buyer copies of all reports, documents, studies, analysis, existing leases of the Property, results of physical inspections, engineering studies, engineering drawings and specifications, surveys, Phase I environmental reports (and any Phase II limited site investigations reports resulting therefrom), soil tests, previously issued title commitments, permits, approvals and authorizations (whether obtained from governmental authorities or third parties) (collectively, the "**Due Diligence Materials**"), such items to be delivered to Buyer together with a written notice from Seller stating that all required Due Diligence Materials have been delivered pursuant to this Section 3.C ("**Due Diligence Notice**"). Prior to Closing, Seller shall not enter into any lease, contract, or other agreement affecting the Property, grant any easement affecting the Property, impose any land use restrictions against the Property or otherwise encumber the Property in any manner that will be binding on the Buyer or the

Property after Closing. Seller will cause, at its sole cost and expense, all existing leases, service contracts and other unrecorded agreements affecting the Property to be terminated effective at or before Closing.

- D. Buyer and Seller acknowledge that either party may wish to use the Property as part of a tax deferred exchange of property with a third party in accordance with Section 1031 of the Internal Revenue Code (or similar statute). In the event either party elects to complete such a tax deferred exchange, the other party (the "**Cooperating Party**") shall, at no cost or expense to the Cooperating Party, cooperate in accomplishing such exchange, including, without limiting, execution of assignments and such other documentation that would be reasonably required to complete such exchange, provided that in no event shall the Cooperating Party be obligated to incur any expense or obligation in connection with such tax deferred exchange. The requesting party shall pay any additional transfer taxes, recording fees or similar closing costs resulting from such exchange. Any tax deferred exchange shall not delay the Closing Date.
- E. Notwithstanding anything in this Agreement to the contrary, Buyer may not perform any invasive or destructive testing of the Property without the prior express written consent of Seller, such consent not to be unreasonably withheld, conditioned, or delayed. Buyer, or Buyer's agents, shall use commercially reasonable efforts not to interfere with any business currently occurring on the Property and Buyer shall promptly restore any damage caused to the Property, as a result of such invasive testing, to the condition which existed immediately prior to commencement of such testing.

4. Risk of Loss. All risk of loss of any kind with respect to the Property shall remain with Seller until the Closing.

5. Default. If Seller fails to carry out the terms of this Agreement or refuses to perform its obligations hereunder upon proper tender of Buyer to close, Buyer may, as its sole remedy, elect either (i) to terminate this Agreement and receive an immediate refund of the Earnest Money Deposit and any Extension Deposits, or (ii) to sue to require the specific performance of this Agreement by Seller. If Buyer fails to carry out the terms of this Agreement or refuses to perform its obligations hereunder upon proper tender of Seller to close, Seller may terminate this Agreement and retain as liquidated damages the entire amount of the Earnest Money Deposit and Extension Deposit(s) (if any), as defined below.

6. Contingencies. Buyer's obligation to purchase the Property pursuant to this Agreement shall be subject to the satisfaction of the following contingencies:

- A. Seller shall have obtained all statutory, governmental and public approvals required under Indiana Law to approve the sale of the Property to Buyer and authorize the execution of all documents necessary to consummate the closing of the sale ("**Seller Approvals**") and Seller shall have provided written notice to Buyer that all required approvals have been obtained by Seller ("**Seller Approval Notice**") within ninety (90) days of the Effective Date. In the event Seller is unable to obtain the Seller Approvals within ninety (90) days of the Effective Date, Seller shall have the right to terminate this Agreement by written notice to Buyer and Buyer shall receive a refund of the Earnest Money Deposit.
- B. Buyer's counsel shall have approved the state of title, title insurance commitments and policies (with such endorsements as Buyer's attorney may require), the Survey,

if any, and all documentation and closing proceedings in connection with the Closing on or before the Closing Date.

- C. Within one hundred eighty (180) days following the later to occur of (a) the Effective Date of this Agreement, (b) the date upon which Buyer has received the Due Diligence Materials and the Due Diligence Notice from Seller, or (c) the date upon which Buyer has received the Seller Approval Notice from Seller (the "**Due Diligence Period**"), Buyer shall have obtained the following:

(i) confirmation, in its sole and absolute discretion, that the Property is suitable for Buyer's Intended Use and operation thereof based the results of any and all inspections, tests, examinations, and surveys performed on the Property by Buyer as permitted under Section 3 hereof, and

(ii) confirmation, in Buyer's sole and absolute discretion, that the Property meets Buyer's investment objectives and that the development of the Property is financially feasible.

The foregoing Items Section 6.B(i) and (ii) are collectively referred to as "**Buyer's 6B Contingencies.**"

If, on or before the expiration of the Due Diligence Period, Buyer is not satisfied with any matter concerning Buyer's proposed development of the Property, for any reason or for no reason, in Buyer's sole and absolute discretion including, without limitation, any condition precedent set forth in this Section, then Buyer shall have the right to terminate this Agreement by written notice given to Seller on or before the expiration of the Due Diligence Period, and the Earnest Money Deposit shall promptly be returned to Buyer. If Buyer does not terminate this Agreement pursuant to this Section 6B prior to the end of the Due Diligence Period, then Buyer shall be deemed to have accepted the Property and the title thereto and shall have no further right to terminate this Agreement for any 6B Contingencies.

- D. Approval Period. In the event Buyer has not terminated this Agreement pursuant to Section 6.B., the approval period ("**Approval Period**") shall mean the period of ninety (90) days following the expiration of the Due Diligence Period. As of the date of the expiration of the Approval Period, the following conditions to Closing must be met:

Buyer shall have obtained all Property entitlements, including rezoning of the Property, approval of any annexation and rezoning for Buyer's Intended Use, final engineering approvals, architectural approvals, site plan approvals, development agreement approvals and all other zoning approvals required by the local municipality and such other permits and approvals for construction of and/or operation of Buyer's Intended Use on the Property from any third party agencies having jurisdiction over the Property including driveway access permits (collectively, the "**Approvals**");

- E. Should Buyer fail to obtain to its satisfaction the Approvals prior to the expiration of the Approval Period, Buyer, at its sole discretion, may either (i) terminate this Agreement, by giving notice to Seller on or before the expiration the Approval Period without any further obligation and receive a refund of the Earnest Money Deposit, or (ii) extend the Approval Period by two additional thirty (30) day periods

by notifying Seller in writing of its intention to do so on or before the expiration of the then current Approval Period. In consideration of each extension of the Approval Period, Buyer shall deposit an additional Ten Thousand Dollars (\$10,000.00) with the Title Company (each an "**Extension Deposit**") within three (3) business days with its giving of said notice to Seller. The Extension Deposit(s) shall be applied to the Purchase Price at Closing but shall not be refundable to Buyer, except in the event of a termination of this Agreement for Seller's default.

- F. In the event that Buyer fails to obtain to its satisfaction the Approvals prior to the expiration of the Approval Period (as extended), Buyer may, at its sole discretion, either (i) terminate this Agreement, by giving notice to Seller on or before the expiration of the Approval Period, as extended, without any further obligation and receive a refund of the Earnest Money Deposit (but not any Extension Deposit(s)), or (ii) notify Seller of its waiver of this contingency and proceed to Closing ("**Closing Notice**"), which notice shall be given to Seller on or before the expiration of the Approval Period (as extended).

In the event Buyer fails to give notice of any election hereinabove provided in a timely fashion, Buyer shall be deemed to have elected to terminate this Agreement as of the date such election was to have been made and failure to deliver any such notice shall not be considered an event of Buyer's default.

The obligation of Seller to proceed to Closing is contingent on Seller obtaining the Seller Approvals. If Seller does not obtain the Seller Approvals pursuant to the terms within Section 6.A, then Seller may terminate this Agreement by written notice to Buyer, in which case Seller shall return the Earnest Money to Buyer and the parties shall have no further obligations under this Agreement except for those that expressly survive a termination of the Agreement.

Buyer and Seller acknowledge that a portion of the Property is currently leased to the American National Red Cross which lease is currently scheduled to expire on March 15, 2023, and that Seller may require additional time to remove its personal property and equipment from the Property. Notwithstanding anything in this Agreement to the contrary, Seller reserves the right and option to postpone the Closing until August 1, 2023. Seller may exercise the option to postpone the Closing Date to August 1, 2023 (or such earlier date specified by Seller) by providing written notice to Buyer no later than thirty (30) days after Seller's receipt of Buyer's Closing Notice.

7. Cooperation by Seller. Seller shall, at no expense to Seller, reasonably cooperate with Buyer, its agents and representatives with their efforts to obtain the above-referenced Governmental Permits & Approvals including signing or co-signing all requisite applications and other documentation. Seller further agrees to use reasonable commercial efforts to facilitate a request by Buyer to attend and give testimony at any meetings or hearings incident to the proceedings that require the presence of Seller. Notwithstanding any provision of this Agreement to the contrary, the effectiveness of any Government Permits, Approvals, or other matters binding upon the Property that are pursued by Buyer prior to Closing shall be conditioned on the Closing of the sale of the Property.

8. Seller Representations, Warranties and Covenants. In addition to all other representations, warranties and covenants by Seller herein, Seller hereby represents, warrants and covenants as follows, to the actual current knowledge of those managerial employees of Seller charged with the responsibility of management and oversight of the Property, without duty of inquiry:

- A. No Other Contracts. No part of the Property is subject to any option contract or other sales contract pursuant to which any other party has any right to purchase an interest therein.
- B. Authority. Seller has all requisite power and authority to execute and deliver, and to perform all of its obligations under this Agreement.
- C. Liens and Liabilities.
- (i) Except for matters which can be removed by the payment of money, which Seller hereby agrees to remove at or before the Closing, the Property is not subject to any liens, security interests, or judgments of any kind whatsoever.
  - (ii) Seller shall be responsible for all debts, claims, contracts, and liability in any way connected with the conduct of its operations on the Property prior to the Closing Date, and Buyer shall have no liability for Seller's operations conducted on the Property or otherwise for any liabilities, known, contingent or otherwise, of the Seller.
- D. Notice of Litigation or Violation. Seller has received no notice of any actions or claims filed or threatened by anyone against the Property or Seller in connection with any injury or damage sustained incidental to the use or occupancy of the Property. Seller shall promptly notify Buyer of any such notice received between the date hereof and the Closing. Seller has received no notice of any violation of any federal, state, county or municipal law, ordinance, order, rule or regulation affecting the Property
- E. Governmental Regulations. The consummation of the transaction contemplated by this Agreement shall not violate any such statute, ordinance, regulation or administrative or judicial order or holding any other agreement or indenture by which Seller is bound.
- F. Dedication; Condemnation. Seller has not made any commitment to any governmental or quasi-governmental authority or agency (federal, state or local), to any employee or agent thereof, or to any third party to dedicate or grant any portion of the Property for roads, easements, rights of way, park lands, or other public or private purposes, or to grant any restrictions, or to incur any other expense or obligation relating to the Property. Seller has not received any written notice of any suits, actions or proceedings pending against or affecting the Property before any court or administrative proceeding or officer, relating to or involving eminent domain or condemnation proceedings.
- G. Hazardous Materials. Seller has not received any notice of any pending or threatened litigation or proceedings before any court or any administrative agency in which any person or entity alleges the release, or threat of release, on or in the Property of any hazardous materials (as such term is defined below). For purposes of this Agreement, the term "hazardous materials" is defined as any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state in which the Premises are located or the United States Government and shall also be deemed to include without limitation, any material or substance that is (i) defined as a "hazardous substance" under any

law of the state in which the Property is located; (ii) petroleum; (iii) asbestos; (iv) designated as "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1321); (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. Section 6991 et seq., the foregoing statutes together with any and all laws and regulations governing the handling, storage, release, remediation or disposal of hazardous materials are hereinafter collectively referred to as "Hazardous Material Laws".

- H. Mechanics Liens. Seller has duly paid all bills, claims, and obligations for labor performed and materials furnished in and about the improvement of the Property and no such bills, claims, or obligations are outstanding or unpaid.
- I. Special Assessments or Recapture Fees. Seller has not received notice of any pending special assessments against the Property.

Except as set forth above, Seller makes no warranty or representation whatsoever, express or implied, regarding the Property, including without limitation the physical or environmental condition, or the fitness for any particular purpose or use, of the Property purchased and sold hereunder. Buyer acknowledges and agrees it is purchasing the Property "AS IS" and, "WHERE IS" AND WITH ALL FAULTS" on the Closing Date, and that except for the express representations and warranties of Seller herein, Buyer is relying solely on its own investigations as to the Property, its condition and other characteristics and compliance with laws, and is not making the purchase of the Property in reliance upon any statements by Seller, Broker, any broker representing Seller, or Seller's other agents. The representations, warranties and covenants set forth in this Agreement shall be deemed to have been made by Seller both as of the Effective Date and the Closing, shall be continuing and will survive Closing for a period of twelve (12) months.

All of the representations and warranties of Seller in this Agreement are expressly qualified by, and deemed to include, (i) all matters disclosed by the Title Commitment and Survey, (ii) all matters disclosed by the Due Diligence Materials or any other materials delivered to Buyer in connection with this Agreement, (iii) all reports, surveys, inspections, or similar materials obtained by Buyer in the course of Buyer's evaluation of the Property, and (iv) all matters discovered or discoverable by Buyer by an examination of public records.

If at any time after the execution of this Agreement, but prior to Closing, either Buyer or Seller becomes aware of information that a representation and warranty contained in this Agreement is inaccurate, untrue or incorrect in any material respect, said party shall promptly disclose said information in writing to the other party hereto. Provided that the party making the representation has taken no willful act to cause the representation to become inaccurate, untrue or incorrect, said party shall not be in default under this Agreement and the sole remedy of the other party shall be to either (i) terminate this Agreement, in which event this Agreement, without further action of the parties, shall become null and void such that neither party shall have any further rights or obligations that, by their terms, expressly survive any such termination; or (ii) elect to proceed to Closing, in which case such party shall be deemed to have waived its rights with respect to any such representation or warranty being inaccurate, untrue or incorrect. Notwithstanding the foregoing, if the representation or warranty in question is rendered inaccurate by virtue of Seller's willful act or omission or Seller's breach of the express terms of this Agreement, then such shall constitute a default by Seller hereunder and the provisions of Section 5 shall

govern. Buyer and Seller are prohibited from making claims against the other party hereto after Closing with respect to any breaches of the other party's representations and warranties contained in this Agreement if the claiming party has knowledge of prior to Closing that such representations or warranties are inaccurate, untrue or incorrect, or for which the claiming party has in its possession materials or documentation indicating that such representation or warranties are inaccurate, untrue, or incorrect.

9. Buyer Representations and Warranties. Buyer hereby represents and warrants the following to Seller:

- A. Authority. Buyer has all requisite power and authority to execute and deliver, and to perform all of its obligations under this Agreement.
- B. Due Execution. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action on the part of Buyer, or will be properly ratified by all necessary company action prior to Closing, and does not and will not (a) require any consent or approval, that has not been obtained or (b) violate any provision of Buyer's organizational documents.

10. Confidentiality. Seller and Buyer acknowledge that the terms and conditions of this Agreement are confidential and that the terms and conditions herein shall not be discussed with any third parties, excepting therefrom Seller and Buyer's legal counsel, financial advisors and employees or family members of Seller. Any disclosure of Information by Seller or Buyer, which is not allowed hereunder, shall constitute a default under this Agreement.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

12. Assignment. Buyer shall have the unrestricted right to assign its rights and obligations under this Agreement to any related entity on or before the Closing Date; provided, however, that Buyer shall not be released from liability hereunder unless expressly released in writing by Seller, in Seller's sole discretion.

13. Commission. Buyer hereby represents and warrants to Seller that, other than Frank Swiss with Swissco Real Estate (the "**Broker**"), Buyer has not contacted any real estate broker in connection with the purchase and sale contemplated herein. Seller shall pay a commission to Broker due and payable as a result of the transaction contemplated herein pursuant to a separate written agreement with Seller and Broker. Seller hereby agrees to indemnify and hold Buyer harmless for any claim made either before or after the Closing Date by any other broker alleging involvement and seeking a commission on this transaction.

14. Notices. All notices required or desired to be given under this Agreement shall be in writing and delivered personally, delivered by reputable overnight courier, sent by email, or sent by certified mail, postage prepaid, return receipt requested, addressed as follows:

A. If to Seller: City of Fort Wayne -- Board of Public Works  
Attn: Karl Bandemer and Christopher Carmichael  
Citizens Square  
200 East Berry Street, Suite 470  
Fort Wayne, IN 46802  
Email: [Karl.Bandemer@cityoffortwayne.org](mailto:Karl.Bandemer@cityoffortwayne.org)  
Email: [Christopher.Carmichael@cityoffortwayne.org](mailto:Christopher.Carmichael@cityoffortwayne.org)

With a copy to: Jon Bomberger  
Faegre Drinker Biddle & Reath LLP  
110 W. Berry Street, Suite 2400  
Fort Wayne, IN 46802  
Email: [jon.bomberger@faegredrinker.com](mailto:jon.bomberger@faegredrinker.com)

B. If to Buyer: Bluestone Single Tenant Properties, LLC  
301 West Grand Avenue, Unit #172  
Chicago, IL 60654  
Email: [rick.claes@bluestonestp.com](mailto:rick.claes@bluestonestp.com)

With a copy to: Pablo Petrozzi  
Taft Stettinius & Hollister LLP  
111 East Wacker Drive, Suite 2800  
Chicago, IL 60601-3713  
Email: [ppetrozzi@taftlaw.com](mailto:ppetrozzi@taftlaw.com)

or to such other address as either party may from time to time designate by written notice given to the other party. Any notice given in accordance with the foregoing shall be deemed to have been given on the date upon which it shall have been delivered by personal delivery or overnight courier or three business days after being deposited in the United States mail certified, return receipt requested, whichever is first. Notices by email shall also be effective as of the date and time of the transmission, provided the notice transmitted is sent on a business day (Monday through Friday) during business hours (9:00am through 5:00pm). In the event notice is transmitted outside of a business day or business hours, the time of notice shall be the first hour of the next business day after transmission.

15. Entire Agreement. This Agreement sets forth all the covenants, promises, agreements conditions and understandings between Seller and Buyer and there are no covenants, promises, agreements, conditions or understandings, either oral or written other than as set forth in this Agreement.

16. Modifications. No alteration, amendment, change, modification or addition to this Agreement, subsequent to the date hereof, shall be binding upon Seller or Buyer unless reduced to writing and signed by them, and by direct reference therein made a part thereof.

17. Invalidity. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof or thereof and such other provisions shall remain in full force and effect.

18. Delays. Whenever a period of time is provided in this Agreement for Seller or Buyer to do or perform any act or thing, neither party shall be liable or responsible for any delays due to strikes, lock outs, casualties, acts of God, war, governmental regulation or control or other similar causes beyond the reasonable control of either party, and in any such event said time period shall be extended for the amount of time Seller or Buyer is delayed. This provision shall not apply to the payment of money.

19. And/Or. When stated in this Agreement, "and/or" shall be construed conjunctively and disjunctively so as to require the broadest interpretation and/or meaning.

20. Survival. All representations, warranties, covenants, conditions, terms and agreements contained in this Agreement which either are expressed as surviving Closing and/or the expiration or termination of this Agreement or, by their nature, are to be performed or observed, in whole or in part, after closing and/or expiration or termination of this Agreement, shall survive Closing and/or the expiration or termination of this Agreement.

21. Captions. The captions/headings of each paragraph in this Agreement are for the convenience of the parties and are not terms of this Agreement.

22. Time of Essence. Time is of the essence with respect to all of the terms and provisions of this Agreement.

23. Construction. This Agreement shall not be construed either for or against Seller or Buyer, but shall be interpreted in accordance with the general tenor of the language in an effort to reach a fair and equitable result.

24. Attorneys' Fees. If either party hereto files a lawsuit in connection with this Agreement, the party that prevails in such action shall be entitled to recover from the non-prevailing party, in addition to all other remedies or damages as limited herein, reasonable attorneys' fees and costs of court incurred in such lawsuit.

25. Multiple Counterparts. This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original document and all of which together shall constitute but one and the same document. Delivery of this Agreement or a counterpart thereof by facsimile or electronic mail will constitute valid delivery.

26. Governing Law. The laws of the jurisdiction in which the Property is located (without regard to conflicts of law) will govern the validity, construction, enforcement and interpretation of this Agreement.

27. Waiver. No waiver by either Seller or Buyer of any of its rights or remedies hereunder or otherwise shall be considered a waiver of any other subsequent right or remedy. Except as expressly provided herein, no waiver by either Seller or Buyer of any of its rights hereunder or otherwise shall be effective unless such waiver is evidenced in a written instrument executed by the waiving party.

28. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, each party will perform, execute and/or deliver or cause to be performed, executed and/or delivered at the Closing or after the Closing, all further acts, deeds and assurances which may be reasonably required to (i) evidence and vest in Buyer the ownership of, and title to, all of the Property, and (ii) consummate the transaction contemplated hereunder.

29. Business Day. For purposes hereof, any stated time period which expires on a weekend day or federal holiday shall be deemed to extend until the next business day.

30. Escrow Release. If either Seller or Buyer becomes entitled to the Earnest Money Deposit and/or Extension Deposit upon termination of this Agreement in accordance with its terms, Buyer and Seller covenant and agree to deliver a letter of instruction to the Title Company directing disbursement of the Earnest Money Deposit and/or Extension Deposit to the party entitled thereto. If either party fails or

refuses to sign or deliver such instruction letter when the other party is entitled to disbursement of the Earnest Money Deposit and/or Extension Deposit within five (5) business days' notice from the requesting party, such non-responding party shall pay all reasonable attorneys' fees and expenses (including, without limitation, court costs and fees and expenses of expert witnesses and other professionals) incurred by the party so entitled to the Earnest Money Deposit and/or Extension Deposit in connection with the recovery of the Earnest Money Deposit and/or Extension Deposit. This obligation shall survive termination of this Agreement.

31. No Third-Party Beneficiary. This Agreement is solely between Seller and Buyer and their respective successors and assigns and no other party will be entitled to rely on any provision hereof for any purpose whatsoever.

32. WAIVER OF JURY TRIAL. THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT EXECUTED IN CONNECTION HERewith OR RELATED HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.

33. JURISDICTION AND VENUE. THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION AND VENUE OF THE COURTS OF THE STATE OR COUNTY IN WHICH THE PROPERTY IS LOCATED INCLUDING THE U.S. DISTRICT COURT, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH OR PROCEEDING WILL BE HEARD AND DETERMINED EXCLUSIVELY IN THESE COURTS. BUYER AND SELLER AGREE THAT THE PROVISIONS OF THIS SECTION WILL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, EACH PARTY MAY SEEK TEMPORARY INJUNCTIVE RELIEF IN A VENUE OF ITS CHOOSING.

[REMAINDER INTENTIONALLY BLANK. SIGNATURE PAGE FOLLOWS.]

**EXECUTED** by the parties on the respective dates indicated below each signature.

**SELLER:** City of Fort Wayne, acting by and through  
the Board of Public Works of Fort Wayne, Indiana

  
By: Nishantha R. Gunawardena  
Its: Chairman  
Date: August 3, 2022

**BUYER:** Bluestone Single Tenant Properties, LLC

  
By: Rick Claes  
Its: Managing Member  
Date: August 1, 2022

EXHIBIT A-1  
DEPICTION OF THE PROPERTY

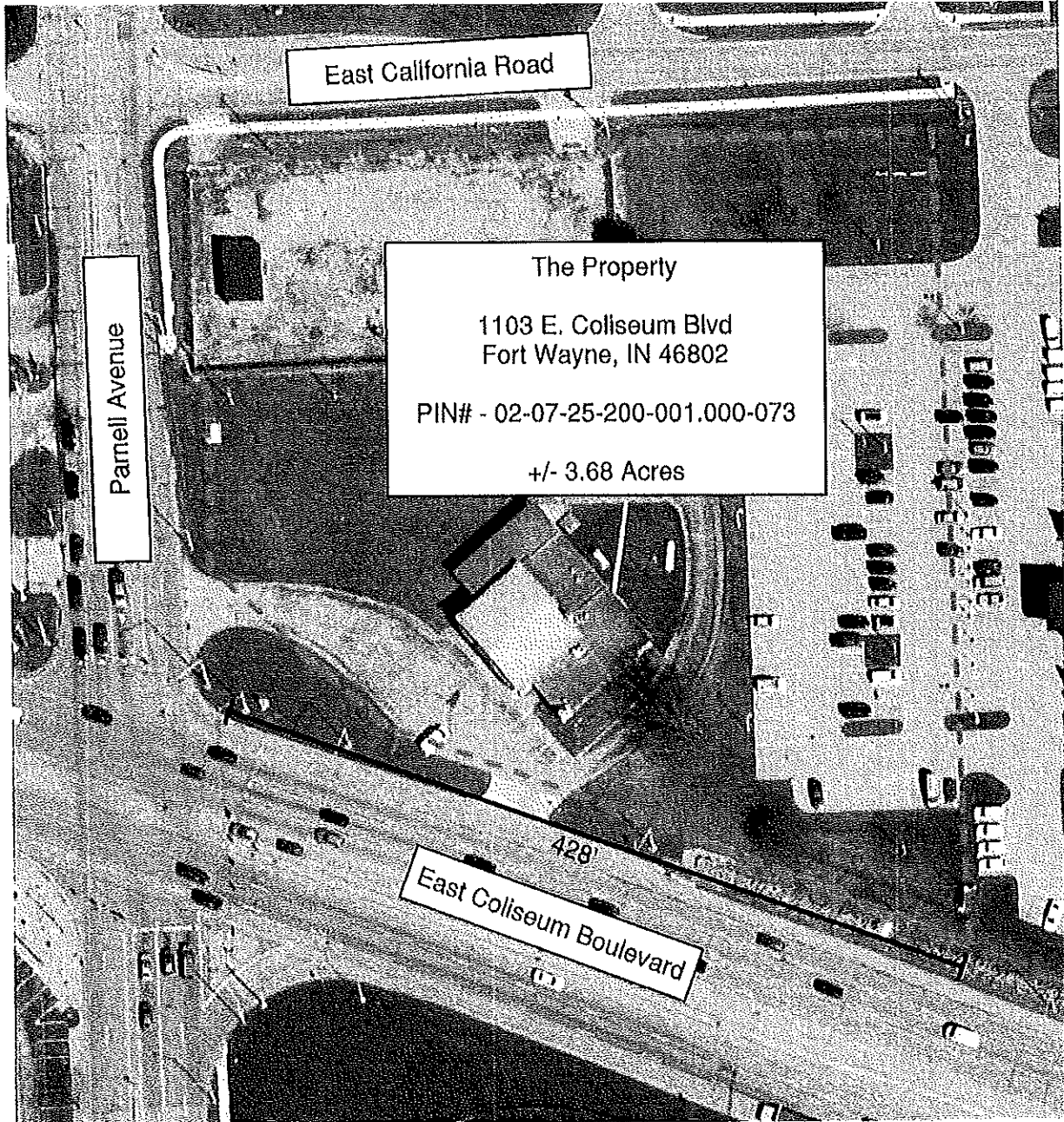


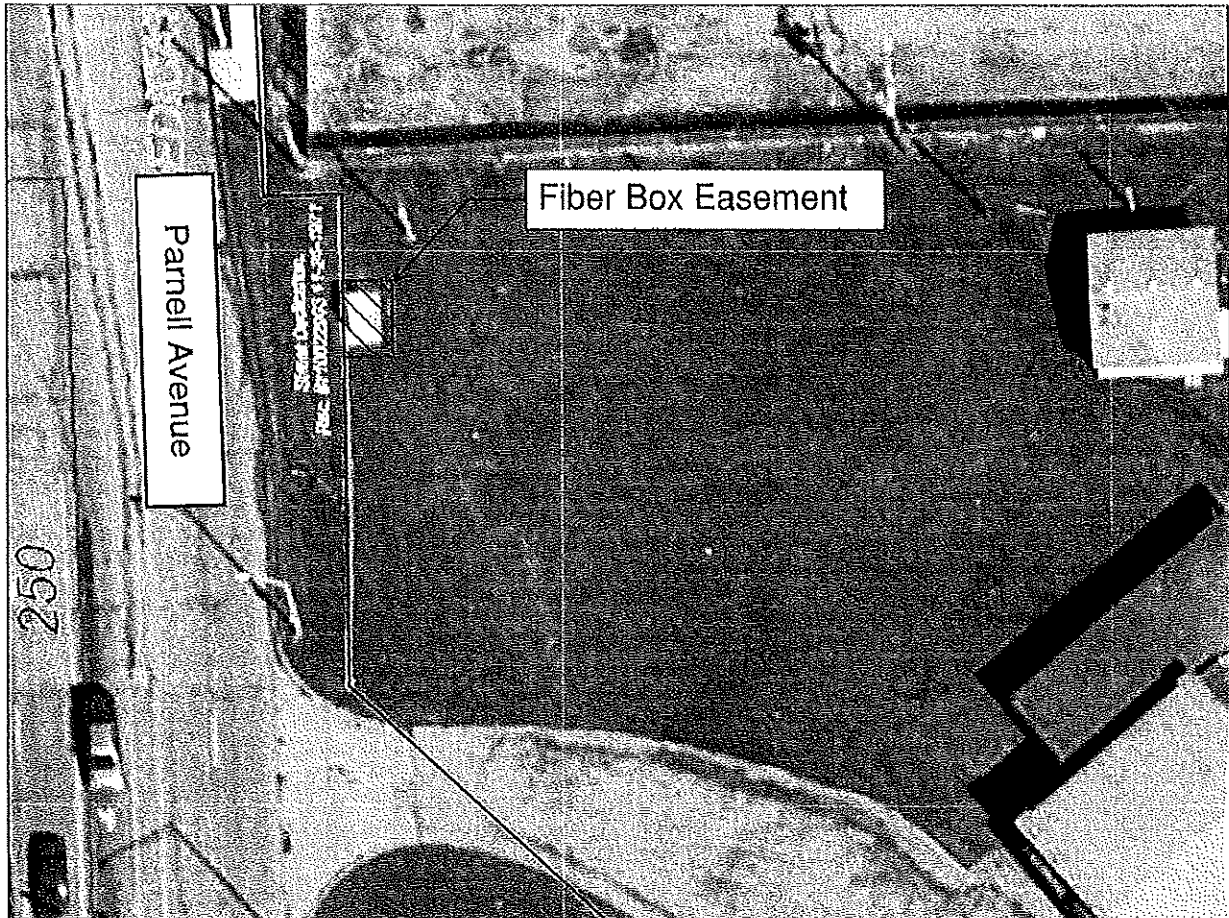
EXHIBIT A-2  
LEGAL DESCRIPTION OF THE PROPERTY

(To be inserted upon completion of Survey)

EXHIBIT B  
PERMITTED EXCEPTIONS

1. All presently existing and future liens for unpaid real estate taxes, assessments, and water and sewer charges not due and payable as of the Closing Date.
2. All zoning, building, environmental and other laws, ordinances, codes, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any, provided that any violations of same do not materially interfere with the current use and occupancy of the improvements on the Premises.
3. All easements and agreements (recorded or otherwise) for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the Property, provided that the same do not materially interfere with the use of the Property for its current use.
4. The Fiber Box Easement
5. Any state of facts an accurate survey or physical inspection of the Property may disclose.

EXHIBIT C  
FIBER BOX EASEMENT



**A RESOLUTION OF THE CITY OF FORT WAYNE, INDIANA  
BOARD OF PUBLIC WORKS  
APPROVING THE SALE OF REAL ESTATE OWNED BY THE CITY OF FORT WAYNE**

**RESOLUTION # 109-11-8-22-3**

WHEREAS, the City of Fort Wayne (the "City") wishes to sell a parcel of real estate located in Allen County; and

WHEREAS, the City wishes to sell to Bluestone Single Tenant Properties, LLC ("Bluestone") that certain parcel of real estate having the address of 1103 E Coliseum Blvd (02-07-25-200-001.000-073); and

WHEREAS, the City wishes to voluntarily sell the real estate to Bluestone for the agreed upon purchase price of Three Million Three Hundred and Fifty Thousand Dollars (\$3,350,000.00); and

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF FORT WAYNE, INDIANA, BOARD OF PUBLIC WORKS AS FOLLOWS:

The sale of the real estate by the City of Fort Wayne, Indiana, in the total amount of Three Million Three Hundred and Fifty Thousand Dollars (\$3,350,000.00) is hereby approved.

APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2022.

**BOARD OF PUBLIC WORKS**

BY: \_\_\_\_\_  
Shan Gunawardena, Chair

BY: \_\_\_\_\_  
Kumar Menon, Member

BY: \_\_\_\_\_  
Chris Guerrero, Member

ATTEST: \_\_\_\_\_  
Michelle Fulk-Vondran, Clerk

**GRIFFIN REAL ESTATE SERVICES, INC.**

229 West Berry Street, Suite 320  
Fort Wayne, IN 46802

November 3, 2022

Mr. Chris Carmichael, Property Manager  
City of Fort Wayne  
200 East Berry Street, Suite 470  
Fort Wayne, IN 46802

Dear Mr. Carmichael:

Regarding: Appraisal Valuation of Property Located at 1103 East Coliseum Boulevard, Fort Wayne, Allen County, Indiana

In accordance with your request (see email dated October 3, 2022, included as Exhibit "A" in Addenda), I personally inspected the above-referenced property for appraisal purposes on October 31, 2022. The property is being appraised to arrive at an opinion of its fee simple estate market value as of the date of inspection on October 31, 2022.

The property consists of a 3.37 acre (146,797 SF) land tract at the NE corner of East Coliseum Boulevard and Parnell Avenue. The building and land improvements do not contribute over the underlying land value.

This appraisal report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the 2020-2022 Uniform Standards of Professional Appraisal Practice (USPAP). This report is being completed based on the scope of work outlined in this appraisal report. I am not responsible for unauthorized use of this report.

After researching and analyzing the available information considered pertinent to value, and giving consideration to its effect on value, I am of the opinion that the subject property has the following fee simple estate market value as of October 31, 2022:

**THREE MILLION ONE HUNDRED FORTY SIX THOUSAND DOLLARS**  
**(\$3,146,000)**

Extraordinary Assumption(s)

This term is defined on page 4 in the Uniform Standards of Professional Appraisal Practice 2020-2022 Edition, published by The Appraisal Foundation, as, ***"An assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions."***

1. The land area of 3.37 acres (146,797 SF) has been calculated from the Allen County GIS and is subject to a formal survey.
2. The land area formerly occupied by Indiana Michigan Electric Company at the northwest corner of the subject property is owned in fee simple title by the City of Fort Wayne.
3. The lease with the Red Cross of the parking area on the east side of the subject property will end as of March 15, 2023.
4. Although not noted, this appraisal assumes there are no environmental hazards associated with the underlying land.
5. There will be a small easement retained by the City of Fort Wayne around the fiber optic box located along the west property line on Parnell Avenue.

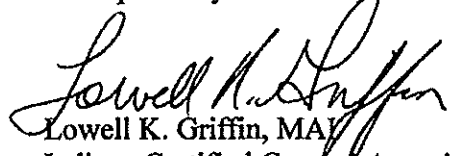
Hypothetical Condition(s)

This term is defined on page 4 in the Uniform Standards of Professional Appraisal Practice 2020-2022 Edition, published by The Appraisal Foundation, as, ***"A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for purpose of analysis."*** There are no hypothetical conditions made for this report.

The accompanying report contains a description of the property and includes the methods employed in arriving at an opinion of the fee simple estate market value of the subject. The property rights appraised are all those rights included in the fee simple title to the real estate. This letter in itself is not an appraisal valuation; however, it is considered to be a part of the valuation which follows.

I do hereby certify that to the best of our knowledge and beliefs, the statements and opinion contained in this report are correct, subject to the assumptions and limiting conditions herein set forth. I also certify that we have no present or contemplated interest in the property or parties involved or in any other property that could affect the conclusions reached.

Respectfully submitted,

  
Lowell K. Griffin, MA  
Indiana Certified General Appraiser  
License No. CG69100003

**Verne V. Mitchell & Associates, Inc.**  
Real Property Appraisal Services

Verne V. Mitchell, III, MAI

November 3, 2022

Mr. Chris Carmichael  
Property Manager  
City of Fort Wayne  
200 East Berry Street  
Suite 470  
Fort Wayne, IN 46802

RE: Appraisal of: 1103 East Coliseum Boulevard  
Fort Wayne, IN 46825

Dear Mr. Carmichael:

Responding to your request, we have appraised the above referenced property which is located at the northeast corner of the intersection of East Coliseum Boulevard and Parnell Avenue in the northeast section of Fort Wayne, Indiana. The property consists of a 3.35 acre irregular shaped land tract that is currently improved with a former fire station improvement that is at the end of its economic life. The purpose of this appraisal is to form an opinion of the market value of the property's fee simple estate conveyable interest. Uniform Standards of Professional Appraisal Practice (USPAP) have been applied in preparing this appraisal report. Assumptions and Limiting Conditions and Extraordinary Assumptions are applied in developing this appraisal. This letter of transmittal is considered part of the appraisal report.

The property was viewed on October 29, 2022. This is the effective valuation date. The analysis in this report was completed on November 3, 2022. The highest and best use of the property is for an intense commercial usage.

Our opinion of the property's market value is:

**THREE MILLION TWO HUNDRED TWENTY THOUSAND DOLLARS**  
**(\$3,220,000)**

If you should have any questions, please advise. Thank you for allowing us to be of service to you.

Respectfully submitted,

VERNE V. MITCHELL & ASSOCIATES, INC.



Verne V. Mitchell, III, MAI  
Indiana Certified General Appraiser  
License Number CG69100097



Alexander C. Mitchell  
Indiana Appraiser Trainee  
License Number TR41400023

VVM/ms

# COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

## RFPs, BIDS, OTHER PROJECTS

|                               |                                                                                                                                                                                                                        |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bid/RFP#/Name of Project      | Purchase Agreement between City of Fort Wayne, Indiana, Board of Public Works and Bluestone Single Tenant Properties, LLC for a property located at 1103 E Coliseum Blvd in Washington Township, Allen County, Indiana |
| Awarded To                    | Bluestone Single Tenant Properties, LLC                                                                                                                                                                                |
| Amount                        | \$3,350,000.00                                                                                                                                                                                                         |
| Conflict of interest on file? | N/A                                                                                                                                                                                                                    |
| Number of Registrants         | N/A                                                                                                                                                                                                                    |
| Number of Bidders             | N/A                                                                                                                                                                                                                    |
| Required Attachments          |                                                                                                                                                                                                                        |

## EXTENSIONS

|                              |     |
|------------------------------|-----|
| Date Last Bid Out            | N/A |
| # Extensions Granted To Date |     |

## SPECIAL PROCUREMENT

|                                                            |                                                                                                                                                                                                                        |
|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Contract #/ID<br>(State, Federal,<br>Piggyback--Authority) | Purchase Agreement between City of Fort Wayne, Indiana, Board of Public Works and Bluestone Single Tenant Properties, LLC for a property located at 1103 E Coliseum Blvd in Washington Township, Allen County, Indiana |
| Sole Source/<br>Compatibility Justification                | N/A                                                                                                                                                                                                                    |

## BID CRITERIA (Take Buy Indiana requirements into consideration.)

|                                        |                         |
|----------------------------------------|-------------------------|
| Most Responsible,<br>Responsive Lowest | No If no, explain below |
| If not lowest, explain                 | N/A                     |

# COUNCIL DIGEST SHEET

## COST COMPARISON

|                                                                                                  |     |
|--------------------------------------------------------------------------------------------------|-----|
| <i>Increase/decrease amount<br/>from prior years<br/>For annual purchase<br/>(if available).</i> | N/A |
|--------------------------------------------------------------------------------------------------|-----|

## DESCRIPTION OF PROJECT / NEED

|                                                                                                                |                                        |
|----------------------------------------------------------------------------------------------------------------|----------------------------------------|
| <i>Identify need for project &amp;<br/>describe project; attach<br/>supporting documents as<br/>necessary.</i> | City disposing of property as surplus. |
|                                                                                                                |                                        |
|                                                                                                                |                                        |
|                                                                                                                |                                        |
|                                                                                                                |                                        |

## REQUEST FOR PRIOR APPROVAL

|                                                                            |     |
|----------------------------------------------------------------------------|-----|
| <i>Provide justification if<br/>prior approval is being<br/>requested.</i> | N/A |
|                                                                            |     |
|                                                                            |     |
|                                                                            |     |
|                                                                            |     |

## FUNDING SOURCE

|                             |  |
|-----------------------------|--|
| <i>Account Information.</i> |  |
|                             |  |
|                             |  |
|                             |  |
|                             |  |
|                             |  |



# CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

November 3, 2022

City Council Members  
City of Fort Wayne

RE: City of Fort Wayne, Indiana, Board of Public Works/Bluestone Single Tenant Properties, LLC Purchase Agreement 1103 E Coliseum Blvd

Dear Council Members:

The City has entered into a Purchase Agreement to sell property at 1103 E Coliseum Blvd in Washington Township, Allen County, Indiana. A copy is attached.

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

We are asking for Council to approve this sale.

If you have any questions on the above, please feel free to contact me at 427-2317.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Carmichael", is written over the printed name.

Christopher Carmichael  
Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

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