

A RESOLUTION APPROVING THE ACQUISITION OF A PORTION OF A PARCEL OF CERTAIN REAL ESTATE LOCATED AT 630 AVENUE OF AUTOS (N OF), WAYNE TOWNSHIP, FORT WAYNE, INDIANA, FOR THE CITY OF FORT WAYNE, BY AND THROUGH THE DEPARTMENT OF REDEVELOPMENT - RESOLUTION #2022-56.

WHEREAS, the City of Fort Wayne, through its Department of Redevelopment – Resolution #2022-56, desires to acquire a portion of a property located at **630 AVENUE OF AUTOS (N OF), WAYNE TOWNSHIP, FORT WAYNE, INDIANA**, specifically described in the Resolution Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Resolution for the property located on at **630 AVENUE OF AUTOS (N OF), WAYNE TOWNSHIP, FORT WAYNE, INDIANA**, is submitted to the Common Council for approval.

WHEREAS, the acquisition of this property is to complete the campus on Avenue of Autos for future use by multiple City Departments;

WHEREAS, the acquisition price for the property is ONE DOLLAR – (\$1.00) in total; and

WHEREAS, Sec. 37-25 of the City of Fort Wayne Code of Ordinances, requires the Common Council approval of any purchase of real estate by the City.

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

SECTION 1. The acquisition of a portion of a parcel of real estate by the City of Fort Wayne through its Department of Redevelopment, located at **630 AVENUE OF AUTOS (N OF), WAYNE TOWNSHIP, FORT WAYNE, INDIANA**,

1 specifically described in the Resolution Exhibit "A" is hereby approved and agreed
2 to. The appropriate officials of the City are hereby authorized to execute all
3 documents necessary to accomplish said donation.
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5 **SECTION 2.** This Resolution shall be in full force and effect from and
6 after its passage and any and all necessary approval by the Mayor.
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9 _____
Council Member

10 APPROVED AS TO FORM AND LEGALITY
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12 _____
13 Malak Heiny, City Attorney
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**RESOLUTION NO. 2022-56
FORT WAYNE REDEVELOPMENT COMMISSION**

**AUTHORIZING A PURCHASE AND SALE CONTRACT
(AVENUE OF THE AUTOS)**

WHEREAS, the Fort Wayne Redevelopment Commission (the "Commission"), governing body of the City of Fort Wayne, Indiana (the "City"), Department of Redevelopment (the "Department") and the Redevelopment District of the City of Fort Wayne, Indiana (the "District"), exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953 which has been codified in Indiana Code 36-7-14 et seq., as amended from time to time (the "Act"); and

WHEREAS, the Commission has proceeded in accordance with Indiana Code 36-7-14-19.5(b)(2) to acquire properties located within the District in pursuit of the redevelopment goals of the City; and

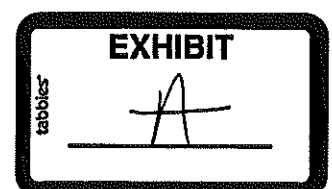
WHEREAS, the Commission has previously approved in Resolution No. 2022-11 the acquisition of properties located at 505 Avenue of Autos, Fort Wayne, Wayne Township, Allen County, Indiana 46804 (Parcel Number 02-12-06-402-002.000-076) ("KEL-014 Property"), 633 Avenue of Autos, Fort Wayne, Wayne Township, Allen County, Indiana 46804 (Parcel Number 02-12-06-402-003.000-076) ("KEL-011 Property"), and 811 Avenue of Autos, Fort Wayne, Wayne Township, Allen County, Indiana 46804 (Parcel Number 02-12-06-452-001.000-076) ("KEL-012 Property"), together with all improvements and landscaping located thereon, and any and all rights, privileges, easements, rights of way, benefits, agreements, development rights and appurtenances thereunto belonging; and

WHEREAS, upon the completion of due diligence by the Department for the acquisition of properties as described in Resolution No. 2022-11, it has become apparent that an additional Purchase and Sale Contract ("Contract"), in the form attached hereto as **Exhibit A**, is necessary to resolve a question of title for a strip of land approximately forty-eight feet in width and located between 505 Avenue of Autos and 633 Avenue of Autos (the "Property"), more particularly described in **Exhibit B**, and to allow for the completion of the full transaction as originally intended in Resolution No. 2022-11; and

WHEREAS, the Commission has determined that is in the best interest of the citizens of Fort Wayne to approve the Contract to allow for the completion of the acquisition of property as originally contemplated in Resolution No. 2022-11; and

NOW, THEREFORE, BE IT RESOLVED BY THE FORT WAYNE REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The Commission hereby authorizes purchase of the Property for a purchase price of One Dollar (\$1).
2. The Commission hereby approves the Contract and authorizes and directs the Executive Director and/or Commission President to take such actions and execute such documents as are reasonable and necessary to carry out the purposes of this Resolution and the closings pursuant to the Contract.
3. This Resolution shall be effective upon adoption.



FORT WAYNE REDEVELOPMENT COMMISSION

Christopher Guerin, President

ADOPTED: 12 December 2022

Nathan Hartman, Secretary

EXHIBIT A

PURCHASE AND SALE CONTRACT

REAL ESTATE PURCHASE AND SALE CONTRACT

THIS REAL ESTATE PURCHASE AND SALE CONTRACT ("Agreement") is made and entered into this 7th day of December, 2022, ("Effective Date") by and between the CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT (referred to herein as "Buyer"), and KELLEY AUTOMOTIVE GROUP, LLC, an Indiana Limited Liability Company (referred to herein as "Seller").

PRELIMINARY STATEMENT

Seller is the owner of certain real property and improvements thereon situated in the County of Allen, State of Indiana, and is willing to sell such real property to Buyer, and Buyer is willing to purchase such real property from Seller, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Certain terms used herein are defined in this Section 1; other terms are defined within the text of this Agreement.

(a) "Buyer" shall mean the City of Fort Wayne, Board of Public Works, Department of Redevelopment, its nominees, successors and assigns.

(b) "Closing" shall mean the consummation of the purchase and sale of the Premises in accordance with the terms of this Agreement upon completion of all conditions precedent herein required.

(c) "Premises" shall mean that certain parcel of real property located in Allen County, Indiana, as presently identified by the description on Exhibit "A" attached hereto and made a part hereof. The full legal description of the Premises shall be noted on the survey to be obtained by Buyer as hereinafter required. Said Premises include all buildings, improvements, fixtures, tenements, hereditaments and appurtenances belonging or in any wise appertaining to such real property, if any, and all of Seller's right, title and interest, if any, in and to (i) any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining such real property to the center line thereof to the extent included in the legal description of the Premises, but subject to public rights-of-way and easements; (ii) any strips and gores of land adjacent to, abutting or used in connection with such real property; (iii) any easements and rights, if any, inuring to the benefit of such real property or to Seller in connection therewith; and (iv) any and all rights in and to any leases, licenses or other assets of any type or nature pertaining to the use of such real property.

(d) "Purchase Price" shall mean the Purchase Price for the Premises in the aggregate sum of ONE DOLLAR (\$1.00) and other good and valuable consideration.

(e) "Seller" shall mean the parties designated as Seller hereinabove, and such other parties as required to consummate the transaction herein intended and to convey the Premises in the state required.

(f) "Title Commitment" shall mean the commitment issued by an ALTA approved title insurance company ("Title Company") selected by the Buyer in which the Title Company commits itself to issue to Buyer an Owner's Policy of Title Insurance upon demand, with its general exceptions deleted, in the full amount of the Purchase Price, setting forth the state of the title to the Premises and subject only to those "permitted exceptions" hereinafter described.

2. Purchase and Sale of Property. Subject to the terms, provisions and conditions set forth herein, Seller hereby agrees to sell the Premises to Buyer, and Buyer hereby agrees to purchase the Premises from Seller.

3. Purchase Price for Premises. The Purchase Price for the Premises, subject to such adjustments, credits, deductions and prorations, if any, as herein required, shall be paid in cash at Closing.

4. Survey of Premises. Buyer shall order and procure, at the expense of Buyer, a boundary survey of the Premises with all easements (including utility easements), available utility services, encroachments, rights-of-way and other matters (whether or not of record) pertaining to or affecting the Premises plotted thereon, and showing the location, area and dimensions of all improvements, easements, streets, roads, railroad spurs, flood hazard areas and alleys on or abutting said Premises, and providing a legal description of the Premises ("Survey"). Such Survey shall be dated or re-dated at a date not more than thirty (30) days prior to the Closing, and shall be made in accordance with the 2021 minimum standard detail requirements for ALTA/NSPS land title surveys as jointly adopted by the American Land Title Association and the National Society of Professional Surveyors.

5. Title to Premises.

(a) State of Title to be Conveyed. At the Closing, Seller shall convey to Buyer, its nominees, successors or assigns, by general warranty deed, good and merchantable and insurable fee simple title to the Premises, free from all liens, encumbrances, restrictions, rights-of-way and other matters, excepting only the following matters: (i) the lien of general real estate taxes not yet due and payable, subject to proration of taxes as hereinafter provided; (ii) liens or encumbrances of a definite or ascertainable amount and which will be paid and discharged in full by or for Seller at or prior to the Closing; and (iii) zoning ordinances, building codes and such encumbrances, restrictions easements or rights of way of record which have not been objected to by Buyer pursuant to Section 5 (c) below ("Permitted Exceptions")

(b) Title Insurance Commitment and Policy. Buyer shall order and procure the Title Commitment, at the expense and for the account of Buyer. At the Closing, a Policy of Title Insurance or an endorsement to the Title

Commitment shall be issued to Buyer insuring Buyer's fee simple interest in the Premises in the state required by Section 5(a) above, with all general exceptions deleted, and subject only to the Permitted Exceptions. Buyer shall pay for, all charges and costs of such Title Insurance Policy. Said policy shall contain such endorsements as Buyer may, in Buyer's sole discretion, deem necessary at Buyer's cost.

(c) Objections to State of Title. If title to the Premises is not in the state required by Section 5(a) above, Buyer shall give written notice to Seller within thirty (30) business days after the date it receives the Title Commitment and Survey, specifying its objection(s) to the state of title to the Premises. Seller shall thereupon have a period of thirty (30) days in which it shall use its best efforts to remedy the objection(s) or to induce the Title Company to issue an endorsement to the Title Commitment satisfactory to Buyer insuring over or removing such objection(s). If Buyer's objection(s) to the state of title to the Premises are not remedied by Seller within such thirty (30) day period, or such further period as Buyer may, in its sole discretion, grant, then Buyer shall have the right, within thirty (30) days thereafter, to give written notice to Seller that Buyer waives such title defects or objections and elects to proceed to acquire the Premises without any abatement of the Purchase Price and to take title to the Premises subject to such defects or objections; otherwise, this Agreement shall be automatically cancelled and rescinded, and the rights and obligations of the parties hereto shall thereupon cease.

6. Seller's Covenants, Warranties and Representations. Seller hereby covenants, warrants and represents as follows:

(a) That Seller has not received any notice of, nor does it have any actual knowledge of, any violation of any law, zoning ordinance, code or regulation affecting the Premises; and that Seller has not received any notice, does not have any actual knowledge of or information as to any existing or threatened condemnation or other legal action of any kind affecting the Premises.

(b) That Seller has not received any notice of, nor does it have any actual knowledge of, any actual or contemplated special assessments against the Premises, or re-assessments for general real estate tax purposes affecting the Premises.

(c) That from the date hereof up to said Closing date, Seller shall refrain from creating or concurring in the creation on the Premises of any easements or other encumbrances, except as herein specifically authorized, which would prevent Seller from conveying title to Buyer subject only to such exceptions as herein permitted.

(d) That except for the items which are to be assumed by Buyer hereunder, if any, or to be prorated as herein set forth, Seller shall be solely liable for the payment of all costs and expenses, liabilities, obligations and claims

arising solely out of Seller's ownership and operation of the Premises prior to the Closing.

(e) That Seller owns fee simple marketable title to the Premises and will take and perform those acts which are necessary hereunder in order to fulfill the terms and conditions hereof.

(f) Except as specifically provided in this Agreement, Buyer shall purchase the Premises in its current condition as is, where is, without additional representations or warranties of any kind whatsoever. The representations, warranties and covenants contained in this Agreement shall survive said Closing date and run in favor of, and for the benefit of, Buyer, its successors and assigns for a period of one (1) year from and after the date of Closing pursuant to this agreement.

7. Conditions to Closing. Buyer and Seller agree that the sale and purchase of the Premises is subject to the satisfaction of the following contingencies and conditions prior to April 30, 2022, and if not so satisfied this Agreement shall, at the option of Buyer or Seller, as the case may be, be cancelled and rescinded. Notwithstanding the foregoing, Buyer or Seller may, at its respective option, waive any of the conditions or contingencies set forth in this Section 7 and proceed to purchase the Premises from Seller.

(a) That all warranties, representations and covenants given by Seller herein, or in any document, instrument or exhibit to be given or furnished by Seller, shall be true and correct and not have been breached on and as of the date of Closing as if made on that date.

(b) That Seller shall have terminated all leasehold interests of any type or nature in and to the Premises, so that upon Closing of the purchase as herein intended, the Premises shall be delivered to Buyer in the state herein required free and clear of all leasehold interests, tenancies or rights to possession of any type or nature.

(c) That Seller shall have removed, at its expense, all equipment, personal property and other items of any kind or nature from the Premises.

(d) That Buyer shall have approved the form and content of the Title Commitment, and the title to the Premises shall have remained in the state reflected by the Title Commitment, as approved by Buyer, through the date of the Closing.

(e) That Buyer shall have approved the form and content of the Survey in accordance with Section 4 hereof.

(f) That Buyer shall have approved the form and content of the deed conveying the Premises to Buyer, the vendor's affidavit, the non-foreign certificate, the closing statement covering the purchase and sale of the Premises, and all other documents and instruments required to effect the sale of the

Premises and the agreements of the parties herein set forth and such other documents as may be reasonably requested by the Title Company to consummate the transaction set forth herein. Buyer and Seller agree to prepare such documents and instruments promptly upon notification by Buyer that all conditions precedent above set forth have been performed or waived. Seller shall also furnish to Buyer such proof of authority as requested by the Title Company authorizing Seller to enter into and consummate this transaction.

(g) That Buyer shall have completed all requirements and shall have received all public approvals required pursuant to Indiana law to authorize the purchase of the real estate as provided herein

(h) That the City of Fort Wayne, Department of Redevelopment, as assignee of Fort Wayne Municipal Building Corporation, shall have consummated the purchase of that certain real estate located in Allen County Indiana and commonly known as 505 Avenue of the Autos, 633 Avenue of the Autos and 811 Avenue of the Autos in Fort Wayne, Indiana pursuant to that certain Real Estate Purchase and Sale Agreement dated November 29, 2021, with CARS-DB4 LP, a Delaware limited partnership ("CARS").

8. Proration of Real Estate Taxes and Assessments. Seller shall assume payment of all installments of non-delinquent real estate taxes and assessments which are payable from and after the date of Closing. There shall be no prorations of taxes between Buyer and Seller.

9. Closing.

(a) Provided all conditions set forth in Section 7 hereof or elsewhere herein have been satisfied or waived, within the time period therein required, the Closing shall take place at such time and date within thirty (30) days thereafter as agreed between Buyer and Seller, unless extended in writing by mutual agreement of the parties hereto. The Closing shall occur at the offices of the Title Company, or at such other place as agreed by Buyer and Seller. Buyer and Seller agree to deposit with Title Company not later than the date of the Closing all executed documents required in connection with this transaction, including such documents as requested by the Title Company issuing the Title Policy. Upon receipt of all necessary documents, and when the Title Company is in a position to issue to Buyer a Policy of Title Insurance, Title Company shall on the date of the Closing, upon instructions from Buyer and Seller, cause the deed to the Premises and any other necessary or appropriate instruments to be filed for record. In the event all the conditions precedent to be performed by Buyer or Seller have not been satisfied by June 1, 2022, this Agreement may be cancelled, at the option of Buyer, without obligation or liability to either party hereto.

(b) Seller hereby agrees that it shall be solely liable for and shall pay for attorneys, brokerage, engineering and other professional fees of Seller. Seller hereby further agrees that it shall be solely liable for and shall pay any and all

delinquent taxes as may be legally required for the conveyance of the property being sold hereunder, so as to convey to Buyer the fee simple title to the Premises, free of all encumbrances, except as herein stated, or except as may be mutually agreed upon by the parties hereto. Buyer hereby agrees that it shall be solely liable for and pay for: (i) the premium charged for the issuance of said ALTA owner's title policy issued pursuant to said commitment; (ii) the cost of the Survey; (iii) the cost of any endorsements to the Title Policy requested by Buyer; (iv) the cost of any recording fees; and (v) any and all other closing costs and fees imposed by the title company issuing the owner's title policy. Each party shall be responsible for its other costs and expenses in accordance with the obligations or conditions to be performed by each respective party hereto. At the time of Closing, Seller and Buyer shall execute and deliver a closing statement setting forth said Purchase Price, with such closing adjustments thereto as may be applicable.

10. Remedies Upon Default. In the event Buyer breaches or defaults under any of the terms of this Agreement, Seller shall be entitled to terminate this Agreement, which shall be its sole remedy at law or in equity. In the event Seller breaches or defaults under any of the terms of this Agreement, Buyer shall have the right to such remedies as may be available in law or equity.

11. Indemnity. Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses, costs and expenses (including, without limitation, attorneys fees) arising or resulting from, or suffered, sustained or incurred by Buyer as a result (direct or indirect) of, the untruth, inaccuracy or breach of any of the covenants, warranties and representations made by the Seller to Buyer herein or in any other documents or instruments executed by Seller to effect the sale herein intended, which indemnity shall survive the Closing hereunder.

12. Notices. All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed sufficiently given when personally delivered or when deposited in the United States mail, postage prepaid, certified or registered, or when delivered to a nationally recognized overnight courier service with guaranteed next business day delivery and addressed as follows (or to such other person, or to such other address, of which any party hereto shall have given written notice as provided herein):

If to Seller:	Kelley Automotive Group, LLC
	Attn: Tom Kelley
	633 Avenue of Autos
	Fort Wayne, IN 46804

With a copy to: Robert C. Kruger
200 East Main Street, Suite 1000
Fort Wayne, IN 46802
Telephone: (260) 426-1300
Facsimile: (260) 422-2722
Email: rkruger@burtblee.com

If to Buyer: The City of Fort Wayne, Indiana
Department of Redevelopment
Attn: Executive Director
200 East Berry Street, Suite 320
Fort Wayne, Indiana 46802
Telephone: (260) 427-2323
Facsimile: (260) 427-1375

With a copy to: Jon A. Bomberger
Faegre Drinker Biddle & Reath LLP
110 West Berry Street, Suite 2400
Fort Wayne, Indiana 46802
Telephone: (260) 424-8000
Facsimile: (260) 460-1700
Email: jon.bomberger@faegredrinker.com

13. Brokerage Commission. Seller and Buyer each warrant and represent that there are no finders or brokers entitled to fees or commissions which may be due from the introduction of the Seller and Buyer and/or the purchase and sale of the Premises, except for fees due Barry Sturges of Sturges Property Group which shall be the sole responsibility of Seller and paid by Seller at Closing.

14. Eminent Domain. In the event that, prior to the date of the Closing, Seller acquires knowledge of any pending or threatened claim, suit or proceeding to condemn or take all or any part of the Premises under the power of eminent domain, then Seller shall immediately give notice thereof to Buyer, and Buyer shall have the right to terminate its obligations under this Agreement by delivering notice thereof to Seller within thirty (30) days after receiving notice from Seller of such condemnation or taking, and thereupon the rights and obligations of the parties hereto shall cease. If Buyer shall not elect to terminate this Agreement pursuant to this Section 14, the parties shall proceed with the Closing in accordance with the terms hereof without abatement of the Purchase Price, but all proceeds of any condemnation award shall be payable solely to Buyer, and Seller shall have no interest therein.

15. Miscellaneous.

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

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

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

(d) Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement. Facsimiles and PDFs of a party's authorized representative's signature shall be deemed to be binding upon such party. The parties agree and acknowledge that this document may be signed by means of an electronic signature, provided that such signature and any related signing process comply fully with all applicable laws (including, without limitation, the U.S. federal E-SIGN Act and any applicable state laws).

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

(f) Cooperation. Buyer and Seller shall cooperate fully with each other to carry out and effectuate the purchase and sale of the Premises in accordance herewith and the satisfaction and compliance with all of the conditions and requirements set forth herein. Wherever the approvals of Buyer or Seller as herein set forth are so required, such approvals shall not unreasonably be withheld.

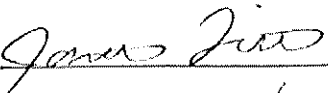
(g) Governing Law. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Indiana.

[Remainder intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Real Estate Purchase and Sale Contract on the day, month and year set forth below to be effective as of the Effective Date first written above.

Executed by Buyer this 7th day of December, 2022.

THE CITY OF FORT WAYNE, INDIANA,
DEPARTMENT OF REDEVELOPMENT

By: 

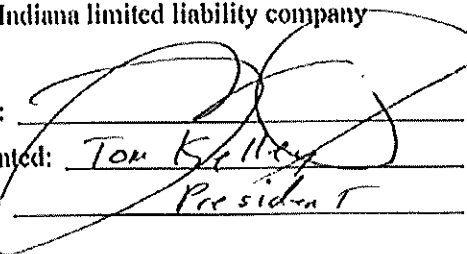
Printed: JONATHAN LEIST

Its: EXECUTIVE DIRECTOR

"Buyer"

Accepted and executed by Seller this 7th day of December, 2022.

KELLEY AUTOMOTIVE GROUP, LLC,
an Indiana limited liability company

By: 

Printed: TOM KELLEY

Its: PRESIDENT

"Seller"

EXHIBIT B

LEGAL DESCRIPTION OF THE PROPERTY

DESCRIPTION OF PREMISES

Part of the lands of Kelley Automotive Group, LLC, as described in Recorder's Document #2017061184 being situated in the West Half of the Southeast Quarter of Section 6, Township 30 North, Range 12 East, Second Principal Meridian, Wayne Township, Allen County, Indiana, this new description having been prepared by Micheal C. Vodde, Indiana Professional Surveyor #20100011, as part of Anderson Surveying, Inc. Survey #22-03-108, dated April 04, 2022, more particularly described as follows:

BEGINNING at a 5/8-inch rebar monumenting the northeast corner of 14/69 Auto Mall, Section I, as recorded in Plat Cabinet "A", page 18, and Document #87-38637, in the Office of the Recorder of Allen County, Indiana; thence North 00 degrees 05 minutes 42 seconds West (all bearings in this description are based on WGS84 latitude and longitude by GPS observation) on the East line of the West Half of the Southeast Quarter of said Section 6 as defined by found monuments, a distance of 48.00 feet to southeast corner of a 4.104 acre parcel being the lands of CARS-DB4, L.P., as recorded in Document #2020007024; thence South 89 degrees 46 minutes 32 seconds West on the south line of said Document #2020007024, a distance of 401.33 feet to a 5/8-inch rebar with an orange identification cap stamped "ANDERSON FIRM #29A" monumenting the southwest corner of said Document #2020007024; thence South 00 degrees 04 minutes 59 seconds East on the east right-of-way line of Avenue of Autos, a distance of 48.00 feet to a 5/8-inch rebar monumenting the northwest corner of Block 6 in 14/69 Auto Mall, Section I; thence North 89 degrees 46 minutes 32 seconds East on the north line of Block 6, a distance of 401.34 feet to the Point of Beginning, containing 0.442 acres of land, more or less, subject to all legal rights-of-way, subject to all Regulated Drain Easements for any Regulated Drains or Tiles being on or within 75 feet of the above described parcel, subject to all other easements, restrictions and rights affecting the above-described parcel.

REAL ESTATE PURCHASE AND SALE CONTRACT

THIS REAL ESTATE PURCHASE AND SALE CONTRACT ("Agreement") is made and entered into this 7th day of December, 2022, ("Effective Date") by and between the CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT (referred to herein as "Buyer"), and KELLEY AUTOMOTIVE GROUP, LLC, an Indiana Limited Liability Company (referred to herein as "Seller").

PRELIMINARY STATEMENT

Seller is the owner of certain real property and improvements thereon situated in the County of Allen, State of Indiana, and is willing to sell such real property to Buyer, and Buyer is willing to purchase such real property from Seller, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** Certain terms used herein are defined in this Section 1; other terms are defined within the text of this Agreement.

(a) "Buyer" shall mean the City of Fort Wayne, Board of Public Works, Department of Redevelopment, its nominees, successors and assigns.

(b) "Closing" shall mean the consummation of the purchase and sale of the Premises in accordance with the terms of this Agreement upon completion of all conditions precedent herein required.

(c) "Premises" shall mean that certain parcel of real property located in Allen County, Indiana, as presently identified by the description on Exhibit "A" attached hereto and made a part hereof. The full legal description of the Premises shall be noted on the survey to be obtained by Buyer as hereinafter required. Said Premises include all buildings, improvements, fixtures, tenements, hereditaments and appurtenances belonging or in any wise appertaining to such real property, if any, and all of Seller's right, title and interest, if any, in and to (i) any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining such real property to the center line thereof to the extent included in the legal description of the Premises, but subject to public rights-of-way and easements; (ii) any strips and gores of land adjacent to, abutting or used in connection with such real property; (iii) any easements and rights, if any, inuring to the benefit of such real property or to Seller in connection therewith; and (iv) any and all rights in and to any leases, licenses or other assets of any type or nature pertaining to the use of such real property.

(d) "Purchase Price" shall mean the Purchase Price for the Premises in the aggregate sum of ONE DOLLAR (\$1.00) and other good and valuable consideration.

(e) "Seller" shall mean the parties designated as Seller hereinabove, and such other parties as required to consummate the transaction herein intended and to convey the Premises in the state required.

(f) "Title Commitment" shall mean the commitment issued by an ALTA approved title insurance company ("Title Company") selected by the Buyer in which the Title Company commits itself to issue to Buyer an Owner's Policy of Title Insurance upon demand, with its general exceptions deleted, in the full amount of the Purchase Price, setting forth the state of the title to the Premises and subject only to those "permitted exceptions" hereinafter described.

2. Purchase and Sale of Property. Subject to the terms, provisions and conditions set forth herein, Seller hereby agrees to sell the Premises to Buyer, and Buyer hereby agrees to purchase the Premises from Seller.

3. Purchase Price for Premises. The Purchase Price for the Premises, subject to such adjustments, credits, deductions and prorations, if any, as herein required, shall be paid in cash at Closing.

4. Survey of Premises. Buyer shall order and procure, at the expense of Buyer, a boundary survey of the Premises with all easements (including utility easements), available utility services, encroachments, rights-of-way and other matters (whether or not of record) pertaining to or affecting the Premises plotted thereon, and showing the location, area and dimensions of all improvements, easements, streets, roads, railroad spurs, flood hazard areas and alleys on or abutting said Premises, and providing a legal description of the Premises ("Survey"). Such Survey shall be dated or re-dated at a date not more than thirty (30) days prior to the Closing, and shall be made in accordance with the 2021 minimum standard detail requirements for ALTA/NSPS land title surveys as jointly adopted by the American Land Title Association and the National Society of Professional Surveyors.

5. Title to Premises.

(a) State of Title to be Conveyed. At the Closing, Seller shall convey to Buyer, its nominees, successors or assigns, by general warranty deed, good and merchantable and insurable fee simple title to the Premises, free from all liens, encumbrances, restrictions, rights-of-way and other matters, excepting only the following matters: (i) the lien of general real estate taxes not yet due and payable, subject to proration of taxes as hereinafter provided; (ii) liens or encumbrances of a definite or ascertainable amount and which will be paid and discharged in full by or for Seller at or prior to the Closing; and (iii) zoning ordinances, building codes and such encumbrances, restrictions easements or rights of way of record which have not been objected to by Buyer pursuant to Section 5 (c) below ("Permitted Exceptions")

(b) Title Insurance Commitment and Policy. Buyer shall order and procure the Title Commitment, at the expense and for the account of Buyer. At the Closing, a Policy of Title Insurance or an endorsement to the Title

Commitment shall be issued to Buyer insuring Buyer's fee simple interest in the Premises in the state required by Section 5(a) above, with all general exceptions deleted, and subject only to the Permitted Exceptions. Buyer shall pay for, all charges and costs of such Title Insurance Policy. Said policy shall contain such endorsements as Buyer may, in Buyer's sole discretion, deem necessary at Buyer's cost.

(c) Objections to State of Title. If title to the Premises is not in the state required by Section 5(a) above, Buyer shall give written notice to Seller within thirty (30) business days after the date it receives the Title Commitment and Survey, specifying its objection(s) to the state of title to the Premises. Seller shall thereupon have a period of thirty (30) days in which it shall use its best efforts to remedy the objection(s) or to induce the Title Company to issue an endorsement to the Title Commitment satisfactory to Buyer insuring over or removing such objection(s). If Buyer's objection(s) to the state of title to the Premises are not remedied by Seller within such thirty (30) day period, or such further period as Buyer may, in its sole discretion, grant, then Buyer shall have the right, within thirty (30) days thereafter, to give written notice to Seller that Buyer waives such title defects or objections and elects to proceed to acquire the Premises without any abatement of the Purchase Price and to take title to the Premises subject to such defects or objections; otherwise, this Agreement shall be automatically cancelled and rescinded, and the rights and obligations of the parties hereto shall thereupon cease.

6. Seller's Covenants, Warranties and Representations. Seller hereby covenants, warrants and represents as follows:

(a) That Seller has not received any notice of, nor does it have any actual knowledge of, any violation of any law, zoning ordinance, code or regulation affecting the Premises; and that Seller has not received any notice, does not have any actual knowledge of or information as to any existing or threatened condemnation or other legal action of any kind affecting the Premises.

(b) That Seller has not received any notice of, nor does it have any actual knowledge of, any actual or contemplated special assessments against the Premises, or re-assessments for general real estate tax purposes affecting the Premises.

(c) That from the date hereof up to said Closing date, Seller shall refrain from creating or concurring in the creation on the Premises of any easements or other encumbrances, except as herein specifically authorized, which would prevent Seller from conveying title to Buyer subject only to such exceptions as herein permitted.

(d) That except for the items which are to be assumed by Buyer hereunder, if any, or to be prorated as herein set forth, Seller shall be solely liable for the payment of all costs and expenses, liabilities, obligations and claims

arising solely out of Seller's ownership and operation of the Premises prior to the Closing.

(e) That Seller owns fee simple marketable title to the Premises and will take and perform those acts which are necessary hereunder in order to fulfill the terms and conditions hereof.

(f) Except as specifically provided in this Agreement, Buyer shall purchase the Premises in its current condition as is, where is, without additional representations or warranties of any kind whatsoever. The representations, warranties and covenants contained in this Agreement shall survive said Closing date and run in favor of, and for the benefit of, Buyer, its successors and assigns for a period of one (1) year from and after the date of Closing pursuant to this agreement.

7. Conditions to Closing. Buyer and Seller agree that the sale and purchase of the Premises is subject to the satisfaction of the following contingencies and conditions prior to April 30, 2022, and if not so satisfied this Agreement shall, at the option of Buyer or Seller, as the case may be, be cancelled and rescinded. Notwithstanding the foregoing, Buyer or Seller may, at its respective option, waive any of the conditions or contingencies set forth in this Section 7 and proceed to purchase the Premises from Seller.

(a) That all warranties, representations and covenants given by Seller herein, or in any document, instrument or exhibit to be given or furnished by Seller, shall be true and correct and not have been breached on and as of the date of Closing as if made on that date.

(b) That Seller shall have terminated all leasehold interests of any type or nature in and to the Premises, so that upon Closing of the purchase as herein intended, the Premises shall be delivered to Buyer in the state herein required free and clear of all leasehold interests, tenancies or rights to possession of any type or nature.

(c) That Seller shall have removed, at its expense, all equipment, personal property and other items of any kind or nature from the Premises.

(d) That Buyer shall have approved the form and content of the Title Commitment, and the title to the Premises shall have remained in the state reflected by the Title Commitment, as approved by Buyer, through the date of the Closing.

(e) That Buyer shall have approved the form and content of the Survey in accordance with Section 4 hereof.

(f) That Buyer shall have approved the form and content of the deed conveying the Premises to Buyer, the vendor's affidavit, the non-foreign certificate, the closing statement covering the purchase and sale of the Premises, and all other documents and instruments required to effect the sale of the

Premises and the agreements of the parties herein set forth and such other documents as may be reasonably requested by the Title Company to consummate the transaction set forth herein. Buyer and Seller agree to prepare such documents and instruments promptly upon notification by Buyer that all conditions precedent above set forth have been performed or waived. Seller shall also furnish to Buyer such proof of authority as requested by the Title Company authorizing Seller to enter into and consummate this transaction.

(g) That Buyer shall have completed all requirements and shall have received all public approvals required pursuant to Indiana law to authorize the purchase of the real estate as provided herein

(h) That the City of Fort Wayne, Department of Redevelopment, as assignee of Fort Wayne Municipal Building Corporation, shall have consummated the purchase of that certain real estate located in Allen County Indiana and commonly known as 505 Avenue of the Autos, 633 Avenue of the Autos and 811 Avenue of the Autos in Fort Wayne, Indiana pursuant to that certain Real Estate Purchase and Sale Agreement dated November 29, 2021, with CARS-DB4 LP, a Delaware limited partnership ("CARS").

8. Proration of Real Estate Taxes and Assessments. Seller shall assume payment of all installments of non-delinquent real estate taxes and assessments which are payable from and after the date of Closing. There shall be no prorations of taxes between Buyer and Seller.

9. Closing.

(a) Provided all conditions set forth in Section 7 hereof or elsewhere herein have been satisfied or waived, within the time period therein required, the Closing shall take place at such time and date within thirty (30) days thereafter as agreed between Buyer and Seller, unless extended in writing by mutual agreement of the parties hereto. The Closing shall occur at the offices of the Title Company, or at such other place as agreed by Buyer and Seller. Buyer and Seller agree to deposit with Title Company not later than the date of the Closing all executed documents required in connection with this transaction, including such documents as requested by the Title Company issuing the Title Policy. Upon receipt of all necessary documents, and when the Title Company is in a position to issue to Buyer a Policy of Title Insurance, Title Company shall on the date of the Closing, upon instructions from Buyer and Seller, cause the deed to the Premises and any other necessary or appropriate instruments to be filed for record. In the event all the conditions precedent to be performed by Buyer or Seller have not been satisfied by June 1, 2022, this Agreement may be cancelled, at the option of Buyer, without obligation or liability to either party hereto.

(b) Seller hereby agrees that it shall be solely liable for and shall pay for attorneys, brokerage, engineering and other professional fees of Seller. Seller hereby further agrees that it shall be solely liable for and shall pay any and all

delinquent taxes as may be legally required for the conveyance of the property being sold hereunder, so as to convey to Buyer the fee simple title to the Premises, free of all encumbrances, except as herein stated, or except as may be mutually agreed upon by the parties hereto. Buyer hereby agrees that it shall be solely liable for and pay for: (i) the premium charged for the issuance of said ALTA owner's title policy issued pursuant to said commitment; (ii) the cost of the Survey; (iii) the cost of any endorsements to the Title Policy requested by Buyer; (iv) the cost of any recording fees; and (v) any and all other closing costs and fees imposed by the title company issuing the owner's title policy. Each party shall be responsible for its other costs and expenses in accordance with the obligations or conditions to be performed by each respective party hereto. At the time of Closing, Seller and Buyer shall execute and deliver a closing statement setting forth said Purchase Price, with such closing adjustments thereto as may be applicable.

10. Remedies Upon Default. In the event Buyer breaches or defaults under any of the terms of this Agreement, Seller shall be entitled to terminate this Agreement, which shall be its sole remedy at law or in equity. In the event Seller breaches or defaults under any of the terms of this Agreement, Buyer shall have the right to such remedies as may be available in law or equity.

11. Indemnity. Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses, costs and expenses (including, without limitation, attorneys fees) arising or resulting from, or suffered, sustained or incurred by Buyer as a result (direct or indirect) of, the untruth, inaccuracy or breach of any of the covenants, warranties and representations made by the Seller to Buyer herein or in any other documents or instruments executed by Seller to effect the sale herein intended, which indemnity shall survive the Closing hereunder.

12. Notices. All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed sufficiently given when personally delivered or when deposited in the United States mail, postage prepaid, certified or registered, or when delivered to a nationally recognized overnight courier service with guaranteed next business day delivery and addressed as follows (or to such other person, or to such other address, of which any party hereto shall have given written notice as provided herein):

If to Seller:	Kelley Automotive Group, LLC
	Attn: Tom Kelley
	633 Avenue of Autos
	Fort Wayne, IN 46804

With a copy to: Robert C. Kruger
200 East Main Street, Suite 1000
Fort Wayne, IN 46802
Telephone: (260) 426-1300
Facsimile: (260) 422-2722
Email: rkruger@burtblee.com

If to Buyer: The City of Fort Wayne, Indiana
Department of Redevelopment
Attn: Executive Director
200 East Berry Street, Suite 320
Fort Wayne, Indiana 46802
Telephone: (260) 427-2323
Facsimile: (260) 427-1375

With a copy to: Jon A. Bomberger
Faegre Drinker Biddle & Reath LLP
110 West Berry Street, Suite 2400
Fort Wayne, Indiana 46802
Telephone: (260) 424-8000
Facsimile: (260) 460-1700
Email: jon.bomberger@faegredrinker.com

13. Brokerage Commission. Seller and Buyer each warrant and represent that there are no finders or brokers entitled to fees or commissions which may be due from the introduction of the Seller and Buyer and/or the purchase and sale of the Premises, except for fees due Barry Sturges of Sturges Property Group which shall be the sole responsibility of Seller and paid by Seller at Closing.

14. Eminent Domain. In the event that, prior to the date of the Closing, Seller acquires knowledge of any pending or threatened claim, suit or proceeding to condemn or take all or any part of the Premises under the power of eminent domain, then Seller shall immediately give notice thereof to Buyer, and Buyer shall have the right to terminate its obligations under this Agreement by delivering notice thereof to Seller within thirty (30) days after receiving notice from Seller of such condemnation or taking, and thereupon the rights and obligations of the parties hereto shall cease. If Buyer shall not elect to terminate this Agreement pursuant to this Section 14, the parties shall proceed with the Closing in accordance with the terms hereof without abatement of the Purchase Price, but all proceeds of any condemnation award shall be payable solely to Buyer, and Seller shall have no interest therein.

15. Miscellaneous.

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

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

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

(d) Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement. Facsimiles and PDFs of a party's authorized representative's signature shall be deemed to be binding upon such party. The parties agree and acknowledge that this document may be signed by means of an electronic signature, provided that such signature and any related signing process comply fully with all applicable laws (including, without limitation, the U.S. federal E-SIGN Act and any applicable state laws).

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

(f) Cooperation. Buyer and Seller shall cooperate fully with each other to carry out and effectuate the purchase and sale of the Premises in accordance herewith and the satisfaction and compliance with all of the conditions and requirements set forth herein. Wherever the approvals of Buyer or Seller as herein set forth are so required, such approvals shall not unreasonably be withheld.

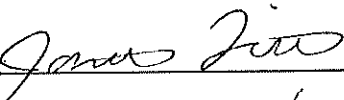
(g) Governing Law. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Indiana.

[Remainder intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Real Estate Purchase and Sale Contract on the day, month and year set forth below to be effective as of the Effective Date first written above.

Executed by Buyer this 7th day of December, 2022.

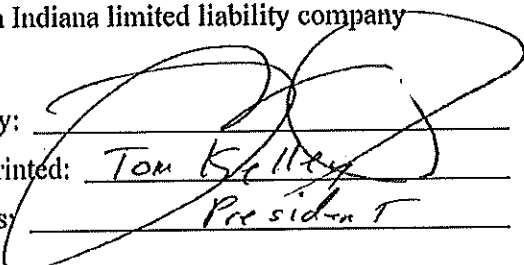
THE CITY OF FORT WAYNE, INDIANA,
DEPARTMENT OF REDEVELOPMENT

By: 
Printed: JONATHAN LEIST
Its: EXECUTIVE DIRECTOR

"Buyer"

Accepted and executed by Seller this 7th day of December, 2022.

KELLEY AUTOMOTIVE GROUP, LLC,
an Indiana limited liability company

By: 
Printed: TOM KELLEY
Its: PRESIDENT

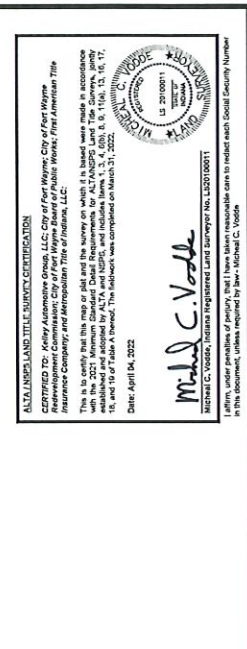
"Seller"

EXHIBIT A

DESCRIPTION OF PREMISES

Part of the lands of Kelley Automotive Group, LLC, as described in Recorder's Document #2017061184 being situated in the West Half of the Southeast Quarter of Section 6, Township 30 North, Range 12 East, Second Principal Meridian, Wayne Township, Allen County, Indiana, this new description having been prepared by Micheal C. Vodde, Indiana Professional Surveyor #20100011, as part of Anderson Surveying, Inc. Survey #22-03-108, dated April 04, 2022, more particularly described as follows:

BEGINNING at a 5/8-inch rebar monumenting the northeast corner of 14/69 Auto Mall, Section I, as recorded in Plat Cabinet "A", page 18, and Document #87-38637, in the Office of the Recorder of Allen County, Indiana; thence North 00 degrees 05 minutes 42 seconds West (all bearings in this description are based on WGS84 latitude and longitude by GPS observation) on the East line of the West Half of the Southeast Quarter of said Section 6 as defined by found monuments, a distance of 48.00 feet to southeast corner of a 4.104 acre parcel being the lands of CARS-DB4, L.P., as recorded in Document #2020007024; thence South 89 degrees 46 minutes 32 seconds West on the south line of said Document #2020007024, a distance of 401.33 feet to a 5/8-inch rebar with an orange identification cap stamped "ANDERSON FIRM #29A" monumenting the southwest corner of said Document #2020007024; thence South 00 degrees 04 minutes 59 seconds East on the east right-of-way line of Avenue of Autos, a distance of 48.00 feet to a 5/8-inch rebar monumenting the northwest corner of Block 6 in 14/69 Auto Mall, Section I; thence North 89 degrees 46 minutes 32 seconds East on the north line of Block 6, a distance of 401.34 feet to the Point of Beginning, containing 0.442 acres of land, more or less, subject to all legal rights-of-way, subject to all Regulated Drain Easements for any Regulated Drains or Tiles being on or within 75 feet of the above described parcel, subject to all other easements, restrictions and rights affecting the above-described parcel.

[illegible]

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	Acquisition of a portion of a property by City from Kelley Automotive Group at 630 Avenue of Autos (N of), Wayne Township, Allen County, Indiana
Awarded To	Kelley Automotive Group
Amount	\$1.00
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 (State, Federal, Piggyback--Authority)	Acquisition of a portion of a property by City from Kelley Automotive Group at 630 Avenue of Autos (N of), Wayne Township, Allen County, Indiana
Sole Source/ Compatibility Justification	N/A

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

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

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	N/A
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DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	City acquiring real estate to be included as a part of Ave of Autos campus to be used by various City Departments

REQUEST FOR PRIOR APPROVAL

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

FUNDING SOURCE

<i>Account Information.</i>	General Funds



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

December 8, 2022

City Council Members
City of Fort Wayne

RE: City of Fort Wayne/Kelley Automotive Group acquisition of a portion of 630
Avenue of Autos (N of)

Dear Council Members:

The City has agreed to acquire a portion of the property located at 630 Avenue of Autos
(N of), Wayne Township, Allen County, Indiana.

The City of Fort Wayne Redevelopment Commission has approved this acquisition.

We are asking for Council to approve this acquisition as well.

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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