

3 **A RESOLUTION OF THE**
4 **COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA,**
5 **APPROVING THE SALE OF LAND**
6 **(DUPONT OAKS BLVD PROPERTY)**

7
8 WHEREAS, the City of Fort Wayne Board of Public Works (the
9 “Board”), is the governing body of the City of Fort Wayne, Indiana, (“City”), the City
10 owns certain real estate located on the West side of Dupont Oaks Boulevard,
11 approximately Six Hundred and Sixty Feet (660’) North of Dupont Road, commonly
12 known as 10633 Dupont Oaks Boulevard, Fort Wayne, IN 46825 (the “Property”) that it
13 wishes to sell to promote an economic development project pursuant to IC 36-1-11-4.2;
14 and
15

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

18 WHEREAS IC 36-1-11-3(c) requires the Council, as fiscal body of the
19 City to approve the sale of real property that has an appraised value of at least Fifty
20 Thousand Dollars (\$50,000.00); and

21 WHEREAS, the City has had the property appraised by two (2) appraisers
22 in accordance with Indiana Code 36-1-11-4.2 and the average of the two appraisals
23 produces a value of the Property of Five Hundred Seventy-Seven Thousand Five
24 Hundred Dollars (\$577,500.00); and

25
26 WHEREAS, City has received an offer to purchase the Property from
27 DDC Real Estate, LLC (“DDC”) for a purchase price of Nine Hundred Thousand Dollars
28 (\$900,000.00) (“Offer”); and
29
30

1 WHEREAS, the City desires to sell the Property to DDC pursuant to the
2 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 DDC in accordance with the Offer pursuant to Indiana Code 36-1-11-3; and

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

8 WHEREAS, a public hearing by the Board regarding the sale of the
9 Property was conducted on February 14, 2023, in accordance with IC 36-1-11-3(b) and
10 IC 5-3-1.

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

14
15 1. The Common Council, in its role as fiscal body of the City,
16 pursuant to IC 36-1-1-3(c) hereby approves the sale of the Property to DDC for the
17 purchase price of Nine Hundred Thousand Dollars (\$900,000.00).

18 2. This Resolution shall be binding and in full force and effect from
19 and after the time it has been adopted by Common Council, approved by the Mayor and
20 otherwise executed and delivered in accordance with any and all laws appertaining
21 thereto.
22

23
24 _____
Council Member

25 APPROVED AS TO FORM AND LEGALITY:

26
27 _____
28 Malak B. Heiny, City Attorney
29
30

REAL ESTATE PURCHASE AND SALE CONTRACT

THIS REAL ESTATE PURCHASE AND SALE CONTRACT ("Agreement") is made and entered into this 18th day of September, 2022 ("Effective Date"), by and between the City of Fort Wayne, Indiana, acting by and through the Fort Wayne Board of Public Works (referred to herein as "Seller"), and DDC Real Estate, LLC, an Indiana limited liability company (referred to herein as "Buyer").

PRELIMINARY STATEMENT

Seller is the owner of certain unimproved real property situated in the City of Fort Wayne, Allen County, Indiana, and is willing to sell such unimproved real property to Buyer, and Buyer is willing to purchase such unimproved 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 DDC Real Estate LLC, an Indiana limited liability company, its nominees, successors and assigns, including without limitation, any entity that may be formed by it for purposes of acquiring the Premises provided that DDC Real Estate LLC shall provide written notice of any assignment and shall remain liable for the performance of the terms and conditions of this Agreement.

(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) "Earnest Money Deposit" shall mean the TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) deposit on the Purchase Price given by Buyer to the Title Company as Escrow Agent as provided in Section 3(a) of this Agreement. Seller may terminate this Agreement in the event that the Earnest Money Deposit is deposited with the Title Company as provided in Section 3(a) of this Agreement.

(d) "Premises" shall mean that certain parcel of unimproved real property containing approximately two (2) acres located in the City of Fort Wayne, Allen County, Indiana, as presently identified by legal 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 tenements, hereditaments and appurtenances belonging or in any wise appertaining to such real property, 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. Notwithstanding the legal descriptions as attached hereto, it is agreed that the Premises shall be deemed to include all right, title and interest of Seller in and to the land commonly known as Lot 1 of Dupont Commons Outlots on Dupont Oaks Boulevard, and such legal description shall be reformed according to the Survey described in Section 4 of this Agreement to include all such interests.

(e) "Purchase Price" shall mean the Purchase Price for the Premises in the aggregate sum of NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$900,000.00).

(f) "Seller" shall mean the party designated as Seller hereinabove.

(g) "Title Commitment" shall mean the commitment issued by an ALTA approved title insurance company ("Title Company") selected by Buyer and approved by the Seller, which approval Seller shall not unreasonably withhold, condition or delay, 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 the Permitted Exceptions as defined in Section 5(a) of this Agreement.

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 shall be payable in the following manner:

(a) Earnest Money Deposit. Within three (3) days of the Effective Date, Buyer shall deposit with the Title Company the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) as the Earnest Money Deposit, which deposit Title Company shall deposit and apply as herein provided; and

(b) Balance of Purchase Price. The balance of the Purchase Price, subject to such adjustments, credits, deductions and prorations, if any, as herein required, shall be paid in cash at Closing.

4. Survey of Premises. Within ten (10) days of the Effective Date, 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 in a form reasonably acceptable to Buyer ("Survey"). The Survey shall be certified to Seller, Buyer, Title Company and such other parties as Buyer may deem necessary.

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 a Special Warranty Deed, 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) all matters that would have been discovered upon review of the Survey, all easements, encumbrances, restrictions of record which were not objected to pursuant to pursuant to Section 5(c) of this Agreement.

(b) Title Insurance Commitment and Policy. Within ten (10) days of the Effective Date, Seller shall order and procure the Title Commitment, at the expense and for the account of Seller. 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. Seller shall pay for, or Buyer shall receive a credit therefor at the Closing, all charges and costs of such Title Insurance Policy. Buyer shall be responsible for the costs of any endorsements requested by Buyer and the cost of any loan policy or special coverages requested by Buyer.

(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 ten (10) 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 ten (10) days in which it may remedy the objection(s) or 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 ten (10) day period, or such further period as Buyer may, in its sole discretion, grant, then Buyer shall have the right, within ten (10) 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, the Earnest Money Deposit shall be refunded to Buyer by the Title Company, 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 conduct its business involving the Premises in such manner as hereinafter set forth, and during such period will refrain from creating or concurring in the creation on the Premises of any easements or other encumbrances which would prevent Seller from conveying title to Buyer subject only to the Permitted Exceptions.

(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 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 six (6) months from the date of Closing.

7. Due Diligence Period. Seller shall deliver to Buyer information regarding the condition of the Premises in Seller's possession and control, if any, within five (5) days of the Effective Date. Such information shall include, but not be limited to, all environmental assessments, legal descriptions, title policies, surveys, soil reports and other similar pertinent information. Buyer shall have a period of ninety (90) days from the Effective Date to conduct its due diligence inspection of the Premises ("Due Diligence Period"). Seller shall provide Buyer with reasonable access to the Premises during the Due Diligence Period. Buyer may not conduct invasive testing of the Premises without the prior written consent of Seller. Buyer shall indemnify and hold Seller harmless from and against any damage, liability or expense incurred by Seller as a result of Buyer's activities upon the Premises during the Due Diligence Period.

Buyer shall maintain liability insurance naming Seller as an additional insured in such amount as is reasonably acceptable to Seller and shall provide Seller with a certificate of insurance evidencing such coverage prior to conducting inspections or investigations during the Due Diligence Period. In the event Buyer is not satisfied with its inspections or investigations during the Due Diligence Period, Buyer may terminate this Agreement and receive a refund of the Earnest Money Deposit by providing written notice to Seller prior to the expiration of the Due Diligence Period. In the event that Buyer does not provide a written notice of termination pursuant to this Section 7 prior to the Expiration of the Due Diligence Period, Buyer's rights pursuant to this Section 7 shall expire and be of no further force and effect.

8. 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 the date that is thirty (30) after the expiration of the Due Diligence Period, and if not so satisfied this Agreement shall, at the option of Buyer, be cancelled and rescinded and the Title Company shall refund Earnest Money Deposit to Buyer. Notwithstanding the foregoing, Buyer may, at its option, waive any of the conditions or contingencies set forth in this Section 8 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 Buyer shall have satisfied itself that gas, electricity, water, sanitary sewer, storm drainage and other utilities are available to the Premises.

(d) That Seller shall have removed, at its expense, all equipment, personal property and other items of any kind or nature from the Premises, except only for those items to remain as a part of the Premises as herein described.

(e) That subject to such improvements, actions or undertakings to be taken prior to Closing as herein contemplated, the Premises will at Closing be in the same general condition as of the Effective Date.

9. Proration of Real Estate Taxes. Seller shall pay all real property taxes and any general and/or special assessments which are due and payable, if any, on or before the date of the Closing, or which otherwise constitute a lien upon the Premises as of the date of the Closing. Current taxes, if any, shall be equitably prorated through the date of the Closing on the basis of the latest available tax bills covering the Premises. If, at the Closing, the Premises or any part thereof shall be subject to any assessment(s) which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the

purposes of this Agreement all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed to the Premises, shall be deemed to be due and payable at the Closing and to be liens upon the Premises and shall be paid and discharged by the Seller at or prior to the Closing.

10. 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 after the expiration of the Due Diligence Period, unless extended in writing by agreement of Buyer and Seller. 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 as described in Section 5(b), 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. The Earnest Money Deposit shall be applied toward the Purchase Price at Closing.

(b) Seller hereby agrees that it shall be solely liable for and shall pay for: (i) the issuance of the Title Commitment required under Paragraph 5(b) hereof; (ii) the premium charged for the issuance of said ALTA owner's title policy issued pursuant to said commitment, and (iii) 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 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 the Permitted Exceptions. Buyer hereby agrees that it shall be solely liable for and shall pay for: (i) the cost of the Survey; (ii) the costs of Buyer's due diligence investigation; (iii) the cost of recoding the deed to the Premises; and (iv) attorneys, brokerage, engineering and other fees incurred by Buyer. 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.

11. Remedies Upon Default. In the event Buyer breaches or defaults under any of the terms of this Agreement, Seller shall be entitled to retain the Earnest Money Deposit 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 may terminate this Agreement upon five (5) days written notice and opportunity to cure to Seller and, in addition, receive a refund of the Earnest Money Deposit. In the alternative, Buyer may seek the right to compel specific performance of

this Agreement and the right to recover Buyer's costs and expenses incurred in enforcing the terms and conditions of this Agreement, including but not limited to Buyer's reasonable attorney fees and court costs.

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:

City of Fort Wayne
c/o Karl Bandemer
200 East Berry Street, 4th Floor
Fort Wayne, Indiana 46802

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

IF TO BUYER:

DDC Real Estate LLC
c/o Andrew Thomas
Ridge Fort Wayne, Co., Inc.
630 Avenue of Autos
Fort Wayne, IN 46804

WITH A COPY TO:

Telephone: _____
Facsimile: _____
Email: _____

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 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 Earnest Money Deposit shall be refunded to Buyer and the rights and obligations of the parties hereto shall cease. If Buyer shall not elect to terminate this Agreement pursuant to this Section 13, 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. AS-IS Transaction. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S LIMITED WARRANTY OF TITLE TO BE SET FORTH IN THE DEED), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE ITEMS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO BUYER OR ANY OTHER MATTER OR THING REGARDING THE PREMISES. UPON CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT THE PREMISES "AS IS, WHERE IS, WITH ALL FAULTS." BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER WITH RESPECT TO THE PREMISES EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN. BUYER WILL CONDUCT SUCH INVESTIGATIONS OF THE PREMISES, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PREMISES AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS OR ANY INFORMATION SUPPLIED BY OR ON BEHALF OF SELLER PURSUANT TO THIS AGREEMENT. BUYER, UPON CLOSING, HEREBY WAIVES, RELINQUISHES AND RELEASES SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT [I.E., NEGLIGENCE AND STRICT LIABILITY]), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY KIND AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER AT ANY TIME BY REASON OF OR ARISING OUT OF ANY PHYSICAL AND ENVIRONMENTAL CONDITIONS, THE VIOLATION OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER MATTERS REGARDING THE PREMISES.

16. 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) 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.
- (e) 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. After Closing, Seller shall for a period of one (1) year provide Buyer, without expense, such cooperation and assistance as reasonably requested by Buyer to familiarize Buyer with the Premises and the operation of the systems and facilities installed therein as of the date of Closing.
- (f) 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.
- (g) 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).

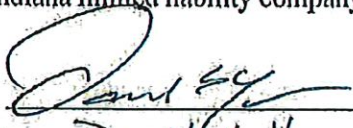
(h) Seller's Condition. Notwithstanding anything to the contrary contained herein, Seller's obligations pursuant to this Agreement are subject to Seller obtaining all public approvals legally required to authorize Seller to convey the Premises to Buyer as provided in this Agreement prior to the expiration of the Due Diligence Period. In the event Seller is unable to obtain all public approvals legally required to authorize Seller to convey the Premises to Buyer prior to the expiration of the Due Diligence Period, then Seller may terminate this Agreement by written notice to Buyer prior to the expiration of the Due Diligence Period and, upon such termination, Buyer shall be entitled to a refund of the Earnest Money Deposit.

[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.

Executed by Buyer this 1 day of September, 2022.

DDC REAL ESTATE LLC,
an Indiana limited liability company

By: 

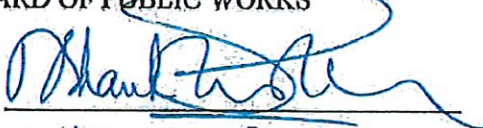
Printed: Donald L. Yeoman

Its: President

"Buyer"

Accepted and executed by Seller this 1st day of September, 2022.

CITY OF FORT WAYNE, INDIANA,
acting by and through the FORT WAYNE
BOARD OF PUBLIC WORKS

By: 

Printed: NISHANTHA R. GUNAWARDENA

Its: CHAIRMAN

"Seller"

EXHIBIT A
LEGAL DESCRIPTION

RESOLUTION # 110-2-21-23-1

RESOLUTION OF THE
CITY OF FORT WAYNE BOARD OF PUBLIC WORKS
AUTHORIZING THE SALE OF LAND

WHEREAS, the City of Fort Wayne Board of Public Works (the "Board"), is the governing body of the City of Fort Wayne, Indiana, ("City"), Division of Public Works (the "DPW"); and

WHEREAS, City owns certain real estate located on the West side of Dupont Oaks Boulevard, approximately Six Hundred and Sixty Feet (660') North of Dupont Road, commonly known as 10633 Dupont Oaks Boulevard, Fort Wayne, IN 46825 (the "Property") that it wishes to sell to promote an economic development project pursuant to IC 36-1-11-4.2; and

WHEREAS, the Property was not acquired by City through eminent domain; and

WHEREAS, City desires to dispose of the Property and DPW is the disposing agent for the City with regard to the Property pursuant to Indiana Code 36-1-11-2; and

WHEREAS, DPW has received appraisals of the fair market value of the Property from Griffin Real Estate Service, Inc. and Verne V. Mitchell & Associates, Inc.; and

WHEREAS, the average value of the two appraisals is Five Hundred Seventy-Seven Thousand Five Hundred Dollars (\$577,500.00); and

WHEREAS, DPW has received an offer to purchase the Property from DDC Real Estate, LLC ("DDC") for a purchase price of Nine Hundred Thousand Dollars (\$900,000.00), which is more than the average of the two appraisals; and

WHEREAS, the Board has published notice of the amount of the offer made by DDC for purchase of the Property in the Fort Wayne Journal Gazette in accordance with IC 36-1-11-4.2(d) and IC 5-3-1; and

WHEREAS, the Board has published notice of a public hearing in the Fort Wayne Journal Gazette regarding the sale of the Property in accordance with IC 36-1-11-3(b) and IC 5-3-1; and

WHEREAS, the Board did, at its meeting on February 14, 2023, hold a public hearing in accordance with IC 36-1-11-3(b) and IC 5-3-1.

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

1. The Board hereby approves and authorizes the sale of the Property by Cityto DDC for a purchase price of \$900,000.00 and hereby ratifies and approves all steps taken prior to the date of this Resolution by the City and the DPW to consummate the sale of the Property to DDC as provided herein .

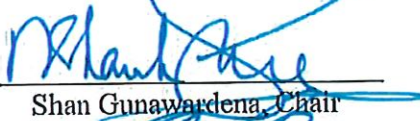
2. The Board hereby authorizes Director of Public Works and/or the City's Property Manager, or either of them individually, to take such steps and actions, including the execution of additional related documents, as are reasonably necessary to carry out the terms and conditions of this Resolution and the sale of the Property as the Director of Public Works and/or the City's Property Manager, or either of them individually, deems appropriate and necessary consistent with the terms and conditions of this Resolution.

3. This Resolution shall be in full force and effect after its adoption by the Board.

* * * * *

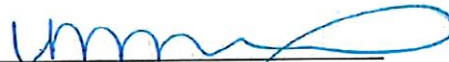
APPROVED this 21 day of February 2023.

BOARD OF PUBLIC WORKS

BY: 
Shan Gunawardena, Chair

BY: 
Kumar Menon, Member

BY: ABSENT
Chris Guerrero, Member

ATTEST: 
Michelle Fulk-Vondran, Clerk

**APPRAISAL REPORT
A BARELAND TRACT
WEST SIDE OF DUPONT OAKS BOULEVARD
FORT WAYNE, ALLEN COUNTY, INDIANA 46825**

**PREPARED FOR:
THE CITY OF FORT WAYNE
200 EAST BERRY STREET
ROOM 470
FORT WAYNE, INDIANA 46802**

**PREPARED BY:
VERNE V. MITCHELL, III, MAI
INDIANA CERTIFIED GENERAL APPRAISER
LICENSE NUMBER CG69100097
AND
ALEXANDER C. MITCHELL
INDIANA APPRAISER TRAINEE
LICENSE NUMBER TR41400023**

**VALUATION DATE:
JUNE 22, 2022**

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

923 Northcrest Business Center, Suite 10D, Fort Wayne, IN 46805 • 260-423-9479

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

Verne V. Mitchell, III, MAI

June 24, 2022

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

RE: Appraisal of: 2.0 Acre Land Tract – Dupont Oaks Boulevard

Dear Mr. Carmichael:

Responding to your request, we have appraised the above referenced property which is located on the west side of Dupont Oaks Boulevard, to the north of Dupont Road in the northeast quadrant of Fort Wayne, Allen County, Indiana. The purpose of this appraisal is to form an opinion of the market value of the 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 govern this appraisal and this letter of transmittal is considered part of the appraisal report.

Subject is an unimproved land tract with a stipulated net size of 87,120 square feet which is equivalent to 2.0 acres. The tract is commercially zoned C3 and is unimproved at the present time. It has direct exposure and access to Dupont Oaks Boulevard which intersects with Dupont Road to the immediate south. The highest and best use of the property is for a commercial type of land usage.

The property was most recently viewed on June 22, 2022 which is the valuation date. The appraisal analysis was completed on June 23, 2022.

The opinion of the market value of the property is:

FIVE HUNDRED NINETY THOUSAND DOLLARS
(\$590,000)

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

Appraisal Valuation
Of
CITY OF FORT WAYNE DUPONT COMMONS LAND TRACT

Located at
4713 East Dupont Road
(Adjacent to South of 10707 Dupont Oaks Boulevard)
Fort Wayne, Allen County, Indiana

For
City of Fort Wayne c/o Christopher Carmichael
Christopher.Carmichael@cityoffortwayne.org

As Of
December 16, 2022
(Date of Inspection)

By
Matthew A. Griffin, MAI
Indiana Certified General Appraiser
License No. CG40200215
Griffin Real Estate Services, Inc.
229 West Berry Street, Suite 320
Fort Wayne, Indiana 46802

GRIFFIN REAL ESTATE SERVICES, INC.
229 West Berry Street, Suite 320
Fort Wayne, IN 46802

December 22, 2022

Christopher Carmichael
City of Fort Wayne

Regarding: Appraisal Valuation of City of Fort Wayne Land Tract Located at 4713 East Dupont Road (Adjacent to South of 10707 Dupont Oaks Boulevard), Fort Wayne, Allen County, Indiana

As you requested, I personally inspected the above-referenced property for appraisal purposes. The subject property is a bare land tract located adjacent to the south of 10707 Dupont Oaks Boulevard in a newer development known as Dupont Commons, which is located on the north side of East Dupont Road at its intersection with Dupont Oaks Boulevard, a short distance east of the Dupont Road/East Dupont Road intersection. The opinion of market value being provided is for the fee simple estate interest.

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 detailed on pages 10 and 11 of this 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 land tract had the following fee simple estate market value as of the date of inspection on December 16, 2022:

FIVE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$565,000)

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.*" There are no extraordinary assumptions made in this valuation.

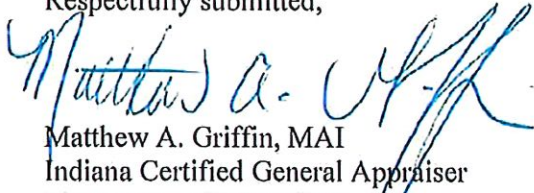
Hypothetical Condition(s)

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 in this valuation.

The accompanying report contains a description of the property and includes the methods employed in arriving at an opinion of the fee simple market value for the subject property. 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 my knowledge and beliefs, the statements and opinions contained in this report are correct, subject to the assumptions and limiting conditions herein set forth. I also certify that I 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,


Matthew A. Griffin, MAI
Indiana Certified General Appraiser
License No. CG40200215

kaf

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, and DDC Real Estate, LLC for a property located at 10633 Dupont Oaks Blvd in Perry Township, Allen County, Indiana
Awarded To	DDC Real Estate, LLC
Amount	\$900,000.00
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 (State, Federal, Piggyback--Authority)	Purchase Agreement between City of Fort Wayne, Indiana, and DDC Real Estate, LLC for a property located at 10633 Dupont Oaks Blvd in Perry 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 disposing of property as surplus.

REQUEST FOR PRIOR APPROVAL

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

FUNDING SOURCE

<i>Account Information.</i>	



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

February 22, 2023

City Council Members
City of Fort Wayne

RE: City of Fort Wayne, Indiana/DDC Real Estate, LLC Purchase Agreement 10633
Dupont Oaks Blvd

Dear Council Members:

The City has entered into a Purchase Agreement to sell property at 10633 Dupont Oaks Blvd in Perry 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".

Christopher Carmichael
Property Manager

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CITIZENS SQUARE

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