

1 **BILL NO. R-24-01-21**

2 **RESOLUTION NO. _____**

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

7 WHEREAS, the City of Fort Wayne Board of Public Works (the
8 “Board”), the governing body of the City of Fort Wayne, Indiana, Division of Public
9 Works owns certain real estate located on the northeast corner of East Coliseum
10 Boulevard and Parnell avenue, commonly known as 1103 Coliseum Boulevard, Fort
11 Wayne, IN 46805 (the “Property”) that it wishes to sell to promote an economic
12 development project pursuant to IC 36-1-11-4.2; and
13

14 WHEREAS, the Common Council of the City of Fort Wayne, Indiana (the
15 “Council”) is the fiscal body of the City of Fort Wayne, Indiana (the “City”); and
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17 WHEREAS IC 36-1-11-3(c) requires the Council, as fiscal body of the
18 City to approve the sale of real property that has an appraised value of at least fifty
19 thousand dollars (\$50,000); and

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

24 WHEREAS, Board has received an offer to purchase the Property from
25 Grand Mere Development, LLC (“Grand Mere”) for a purchase price of Three Million
26 One Hundred Eighty-Three Thousand Dollars (\$3,183,000) (“Offer”); and
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1 WHEREAS, the Board desires to sell the Property to Grand Mere
2 pursuant to the Offer pursuant to Indiana Code 36-1-11-4.2; and

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

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

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

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

13 1. The Common Council, in its role as fiscal body of the City,
14 pursuant to IC 36-1-1-3(c) hereby approves the sale of the Property to Grand Mere for
15 the purchase price of Three Million One Hundred Eighty-Three Thousand Dollars
16 (\$3,183,000).

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

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23
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25 _____
Member of Council

26 APPROVED AS TO FORM AND LEGALITY

27
28 _____
29 Malak Heiny, City Attorney
30

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "Agreement") is made and entered effective as of the later of the date when signed by both parties (the "Effective Date") between Grand Mere Development, LLC., an Indiana limited liability corporation or its designee ("Buyer") and City of Fort Wayne, Indiana, acting by and through the Fort Wayne Board of Public Works the ("Seller"). Buyer may assign this Agreement to any affiliate, owner or entity before closing. In consideration of the mutual covenants, agreements, representations and warranties contained in this Agreement, the parties agree as follows:

1. PURCHASE AND SALE, COVENANT DEED.

- a. Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, Seller shall sell, convey, assign and transfer to Buyer and Buyer shall purchase from Seller, all of the Seller's right, title and interest in and to real estate generally located at 1103 E Coliseum Blvd, Fort Wayne, Indiana 46825, identified as Parcel Nos. 02-07-25-200-001.000-073 all as generally depicted on Exhibit A (the "Premises") consisting of approximately 3.33+/- Acres of land and all buildings and improvements thereon. The parties acknowledge and agree that (a) the legal description of the Premises shall be updated as soon as reasonably practicable to set forth the precise legal description of the Premises based on the latest vesting deed(s) of record and survey of the Premises. The Premises shall be deemed to include the real property described on Exhibit A, all privileges, rights, easements and/or appurtenances serving such Premises, all buildings, systems, facilities, fixtures, structures, fences, parking areas, machinery, equipment, apparatus and appliances used in connection with the operation, maintenance, use or occupancy of the Premises and all tangible personal property owned by Seller and used in connection with the ownership, operation, maintenance, use or occupancy of the Premises.
- b. Limited Warranty Deed. At Closing (as defined below), Seller shall convey to Buyer the Premises by limited warranty deed, conveying the Premises unencumbered, good and marketable title in fee simple, free of any mortgage or other liens and encumbrances.

2. PURCHASE PRICE. The purchase price ("Purchase Price") for the Premises shall be Three Million One Hundred Eighty-Three Thousand Dollars (\$3,183,000.00) to be paid as follows:

- a. Ten Thousand Dollars (\$10,000.00) (the "Security Deposit"), by wire transfer to Fidelity National Title, 4215 Edison lakes Parkway, Mishawaka, Indiana (the "Title Company"), no later than 5:00 p.m. Eastern Time on the fifth business day after the Effective Date, which shall be nonrefundable upon the expiration of the Contingency Period, except as expressly set forth herein.
- b. The remainder of the Purchase Price (i.e., the Purchase Price less the Security Deposit), plus or minus costs and prorations, as provided hereafter, through the Closing escrow by wire transfer of immediately available good funds to the Title Company on the Closing Date ("Balance of the Purchase Price").

- c. Security Deposit shall be held by Title Company in escrow pursuant to such escrow agreement as may be agreed among Buyer, Seller and Title Company.
 - d. Security Deposit shall be refunded to Buyer in the event the Buyer delivers a Termination Notice in accordance with Section 7 or the Contingency Period expires and Buyer fails to ask to go to Closing.
 - e. Credits and Prorations. The Purchase Price shall be subject to such prorations, credits, allowances, or other adjustments as provided in this Agreement.
 - f. Balance of Purchase Price. At Closing, Buyer shall pay Seller through the Title Company the balance of the Purchase Price (after accounting for any prorations) by wire-transfer of immediately available federal funds.
 - g. No Liabilities or Contracts Assumed. The purchase and sale contemplated by this Agreement shall not require Buyer's assumption of any of Seller's obligations or duties under any contract pertaining to the Premises.
3. CLOSING. Provided that the conditions to closing contained in this Agreement have been either satisfied or otherwise waived by Buyer, closing of the transactions contemplated in this Agreement ("Closing") shall take place at the offices of the Title Company, within thirty (30) days (with the exact date and time to be mutually agreed upon by the parties) following the end of the Contingency Period. Any reference in this Agreement to "a closing," the "closing," the "closing date", the "date of closing," or the "day of closing," shall mean the closing of the purchase and sale contemplated by this Agreement.
4. REPRESENTATIONS OF SELLER. To induce Buyer to enter into this Agreement and to purchase the Premises, Seller represents to Buyer as follows:
- a. City of Fort Wayne Board of Public Works is a division of the City of Fort Wayne, Indiana, a municipality, validly existing and in good status under the laws of the State of Indiana. Each of the parties that constitute the Seller have the full power to enter into this agreement and to perform its obligations under this agreement. The execution and delivery of this agreement has been or will be, and the performances obligation hereunder have been or will be duly authorized by all necessary and appropriate municipal action as the case may be of Seller. Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury and in any enabling legislation or other Executive Orders in respect thereof.
 - b. Authority to Enter into Agreement. Seller has full power and authority to enter into and carry out the terms and provisions of this Agreement and the transactions contemplated hereby, including the sale, assignment, transfer, conveyance and delivery of the Premises to Buyer, without obtaining the approval or consent of any other party. Seller's execution, delivery and performance of this Agreement and all other agreements or instruments contemplated hereby, including the sale, assignment, transfer, conveyance and delivery of the Premises to Buyer, will be the legal, valid and binding obligations of Seller enforceable in accordance with their terms. There are no leases on this Premises which would continue after Closing.

- c. No Liens. Seller holds fee simple title to the entire Premises and there are no recorded or unrecorded liens, security interests or other encumbrances against the Premises which will not be satisfied at or prior to Closing. There are no parties in possession of any portion of the Premises other than Seller, except as otherwise provided in this Agreement.
- d. Litigation. There is no action, temporary restraining order, injunction, suit, proceeding, inquiry or investigation at law or in equity, or before or by a judicial or administrative court or agency, relating to the Premises, including but not limited to the United States Environmental Protection Agency or the Indiana Department of Environmental Management, relating to hazardous substances or hazardous wastes having been placed, held, located, released, disposed, stored or dumped on or at the Premises.
- e. Compliance with Laws. The Premises comply with Indiana laws, ordinances, rules, permits and regulations of all applicable governmental authorities, including without limitation, those relating to environmental conditions, health, welfare, sanitation, occupational safety and health and zoning matters.
- f. Contracts and Agreements. Seller is not a party to any executed, valid and binding contract to sell the Premises other than this Agreement. Seller is not a party to any contract, agreement, or other commitment which is directly related to the Premises which will be binding following closing.
- g. Mechanics' Liens. No work has been performed or material furnished by or on Seller's behalf or request with respect to the Premises which could give rise to a mechanic's lien or materialman's lien against the Premises, except as otherwise provided in this Agreement.
- h. Access. Seller is not aware of any fact or condition which would result in the termination of the current access from the Premises to any presently existing highways and/or roads adjoining or situated on the Premises, or to any existing sewer, water or other utility facilities servicing, adjoining, or situated on the Premises. To Seller's knowledge, there is no existing, proposed or contemplated plan to widen, modify or realign any street or highway contiguous to the Premises.
- i. Environmental Matters. To the best knowledge of Seller, the (i) Premises are free from contamination by or from any "hazardous substances" or "hazardous wastes" as such terms are defined and/or used in applicable state or federal law or the regulations issued under them, (ii) no person or entity has engaged in operations at or upon the Premises which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances or hazardous wastes other than in material compliance with applicable laws, and (iii) there has been no releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping from, on or about the Premises of any such hazardous substances or hazardous wastes.
- j. Broker. Seller has not any contact or dealing regarding the Premises, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the sale contemplated herein, other than Sturges Property Group acting on behalf of

Buyer and Seller. Broker will receive at Closing a fee from Seller only pursuant to signed agreements by Seller and Broker.

The representations and warranties listed above are made to the current actual knowledge of Christopher Carmichael, as the Property Manager for the City of Fort Wayne, without independent investigation or inquiry. The representations and warranties above are expressly qualified by and do not extend to: (a) matters which relate to the Premises and are a matter of public record; and (b) matters that are discovered by Buyer during Buyer's due diligence investigation of the Premises prior to the Closing.

5. EVIDENCE OF TITLE.

- a. Title. Within ten (10) business days after the Effective Date, Seller, at Seller's sole cost and expense, shall cause to be furnished to Buyer a copy of a commitment for an ALTA Owner's Title Insurance Policy from the Title Company ("Title Commitment") insuring for the full amount of the Purchase Price. The Title Commitment shall show in Seller, good, merchantable and indefeasible title to the Premises, in fee simple, free and clear of all liens and encumbrances other than the following exceptions: (a) zoning and building laws, ordinances and regulations; (b) legal streets and highways; (c) building setback lines, rights-of-way, covenants, restrictions, conditions, and easements of record which Buyer has not objected to during its title review; and (d) the lien of property taxes which are not then due and payable (items (a) through (d) are collectively referred to as the "Permitted Exceptions"). The Title Commitment shall set forth the state of title to the Premises, together with all exceptions or conditions to such title, which would appear in an Owner's Title Insurance Policy. At closing, a Title Insurance Policy in conformance with the commitment indicating the release of all mortgage liens, if any, shall be issued to Buyer at Seller's cost. Seller shall not be responsible for the cost of any special endorsements, special coverages or any mortgagee's title insurance coverage required by Buyer.
- b. Title Review. Buyer shall have the Contingency Period to review the Title Commitment. If any objection to any matter in the commitment exists, Buyer shall deliver in writing to Seller such objections as Buyer may have to anything contained or set forth therein. Other than the mortgage liens, which shall be required to be released at closing, any item to which Buyer does not object during the Contingency Period shall be deemed to be a Permitted Exception. If Buyer raises any such objections to the title commitment within the Contingency Period, Seller shall have ten (10) days after receipt of Buyer's objections to notify Buyer that Seller will remove or cause the title insurance company to insure against any such objectionable exceptions, in which event Seller will extend the closing date for such period as shall be required to affect such cure, but not beyond forty-five (45) days. If Seller gives Buyer notice that Seller cannot cause an objectionable exception to be removed, Buyer shall have ten (10) days in which to notify Seller that Buyer will proceed with the purchase and take title to the Premises subject to such exceptions, or that Buyer will terminate this Agreement. If this Agreement is terminated following notice under the provisions of this paragraph, then neither party shall have any further rights or obligations hereunder, and each party shall bear its own costs incurred hereunder; provided, however, the Security Deposit shall be refunded to Buyer. If Buyer fails to notify Seller of any objections to the commitment within the Contingency Period, Buyer shall be deemed to have elected to proceed with the purchase and

take title to the Premises subject to such exceptions. Any such elections to proceed by Buyer shall be deemed a waiver of such exception only as to Seller and shall not serve to waive such exception as to any person or entity not a party to this Agreement.

6. SURVEY.

Within Contingency Period, Buyer shall have the right to obtain an ALTA standard survey of the Premises. If there are any objections to the Survey, Seller shall have ten (10) days after receipt of Buyer's objections to notify Buyer that Seller will remedy such objection or cause the title insurance company to insure against any such objection and provide Buyer with evidence reasonably satisfactory to Buyer that such objection will be remedied or insured against before Closing, in which event, Seller will extend the closing date for such period as shall be required to effect such remedy (but not beyond 45 days). If Seller gives Buyer notice that Seller cannot remedy the objection, Buyer shall have ten (10) days in which to notify Seller that Buyer shall proceed with the purchase and take title to the Premises notwithstanding Buyer's objection to the survey, or that Buyer shall terminate this Agreement. If this Agreement is terminated following notice under the provisions of this paragraph, then neither party shall have any further rights or obligations hereunder, and each party shall bear its own costs incurred hereunder, and the Security Deposit shall be refunded to Buyer. If Buyer proceeds to closing, the closing of this transaction shall be deemed a waiver of such objection only as to Seller and shall not serve to waive such objection as to any person or entity not a party to this Agreement.

7. CONTINGENCY PERIOD

Buyer is granted a period of one hundred fifty (150) days following the Effective Date (the "Contingency Period") in order to review the Seller's Documents, Title Commitment, Survey and inspect the Premises and perform all pre-purchase investigations as Buyer may elect (including without limitation any environmental, engineering or other studies) as well as to seek approval for any rezoning or site plan approval of the Premises to be effective only upon Closing ("Approvals") at Buyer's own expense. In the event Buyer is not satisfied, in its sole and absolute discretion, with the results of its inspections and other due diligence, then Buyer may elect to terminate this Agreement at any time prior to the expiration of the Contingency Period. Buyer shall have the right to extend the initial Contingency Period for two additional forty-five (45) day periods (all extensions will still be referenced as "Contingency Period" in this Agreement), upon written notice to Seller. If Buyer fails to notify the Seller during the Contingency Period that it is satisfied with its review or that it wants to extend the Contingency Period, or that it wants to go to Closing, then Buyer's Security Deposit will be refunded to Buyer and this contract is terminated and the parties shall have no further rights or obligations hereunder. Each of the two extensions will make 50% of the Security Deposit non-refundable to Buyer, so long as the Seller is not in default of any of the terms of this Purchase Agreement. All non-refundable Security Deposits will be applicable to Purchase Price at closing.

8. DELIVERY OF INFORMATION

Within ten (10) days after the Effective Date, Seller shall provide Buyer with copies of all documents in Seller's possession, including copies of leases, which pertain to restrictive covenants, plans, surveys, reports, tests, studies, title documentation (including copies of exception documents which may be referenced in the title commitment) and environmental reports related to the Premises, if any as are in Seller's possession (collectively, the "Seller's Documents").

9. TAXES, ASSESSMENTS AND PRORATIONS.

The taxes on the Premises, if any, shall be prorated as of the closing date (on a current/calendar year basis) based upon the latest official tax rates and credits and assessment of the Premises. The Seller's portion of such pro-rata as well as any and all unpaid taxes and assessments related to prior years shall be paid prior to Closing or credited against the Purchase Price at Closing. All transfer taxes and documentary stamps imposed on or in connection with this transaction shall be paid by Seller. Seller shall cause any and all public utilities serving the Premises to issue final bills to Seller on the basis of readings made as of Closing and all such bills shall be paid by Seller. Buyer shall be responsible for all utility bills from and after the Closing.

10. CONDEMNATION OR DAMAGE TO THE PREMISES.

Risk of loss shall remain on Seller prior to Closing. If prior to the Closing of this transaction, all or any substantial part of the Premises is condemned, damaged or destroyed, Buyer shall have the option of either applying the proceeds of any condemnation award or insurance policies to reduce the total purchase price payable by buyer hereunder, or terminating this Agreement by delivering written notice of termination pursuant to this Section to Seller within ten (10) days of the date Seller notifies Buyer in writing of such condemnation, damages or destruction.

11. POSSESSION.

Buyer shall be entitled to possession of the Premises at and upon the Closing.

12. PRE-CLOSING COVENANTS.

- a. Access/Investigation. Buyer and Seller agree that Buyer and its authorized representatives shall be provided full access to the Premises (at mutually agreeable times) during the Contingency Period (as defined above) to access and conduct such investigations as it deems necessary, regarding the Premises. Buyer shall indemnify and hold Seller harmless from and against any liability, loss or damage incurred by Seller, including attorney fees and court costs, as a result of Buyer's activities upon the Premises. Buyer shall maintain commercial liability insurance covering the activities of Buyer and its contractors, agents and employees while on the Premises in such amounts and subject to such terms as are approved by Seller, which approval Seller agrees shall not be unreasonably withheld, conditioned or delayed.

- b. Support in Seeking Approvals. Seller covenants and agrees to act in good faith and, upon Buyer's request, when legally permissible and appropriate under the circumstances, provide favorable support and such consents as Buyer may reasonably request in order to authorize Buyer to seek Approvals, including (without limitation) for the zoning and development of the Premises (provided, however, any such zonings shall become effective only upon Closing).
 - c. No Encumbrances. Seller covenants and agrees that, prior to Closing, it shall not encumber the Premises with any mortgage or other liens. In addition, Seller covenants and agrees, that prior to Closing, Seller will not grant any easements, options, licenses or rights regarding the Premises or otherwise enter into any contracts regarding the lease or other aspects of the Premises which would continue in effect beyond the Closing without Buyer's prior written consent.
 - d. Maintain Premises. Between the Effective Date and the Closing, Seller shall:
 - i) maintain the Premises in as good repair as exists as of the Effective Date except as otherwise provided in this Agreement, reasonable wear and tear excepted, shall perform all work required to be done and pay all amounts required to be paid under the terms of any agreement relating to the Premises, and shall timely make all repairs, maintenance and replacements of equipment or improvements, the same as though Seller were retaining the Premises so that the Premises will be in the same condition at the Closing as it is on the Effective Date, reasonable wear and tear excepted.
 - ii) continue to operate the Premises in the same manner as Seller has been doing; and promptly give Buyer copies of written notices received by Seller asserting any violation of any permits or any covenants, conditions, restrictions, laws, statutes, rules, regulations or ordinances applicable to the Premises, and perform when due Seller's obligations under the permits and applicable laws.
 - iii) not make, authorize or agree to make any capital improvements or other capital expenditures, other than emergency capital improvements or expenditures.
 - iv) not enter into any new lease of any portion of the Premises unless such new lease has been approved in writing by Buyer (which approval may be withheld in Buyer's sole discretion) nor shall Seller enter into any new contract or agreement for or relating to the use, operation and/or maintenance of any portion of the Premises without Buyer's consent unless the same may be cancelled at the Closing without cost to Buyer.
13. CLOSING CONDITIONS AND ADDITIONAL AGREEMENTS.
- a. In addition to any other conditions to Closing in this Agreement, Buyer's obligations under this Agreement are subject to the satisfaction of the following conditions (although Buyer may elect to waive any or all of such conditions) which if not satisfied on or prior to Closing may permit Buyer to terminate this Agreement, receive a refund of the Deposit and neither party will have any further obligations hereunder.

- b. No Actions. No action, proceeding or investigation shall be pending, instituted or threatened against Seller related to the transaction or the Premises, including but not limited to any action or proceeding to condemn any part of the Premises.
- c. Representations. Seller shall not be in default under any of the terms and conditions contained in this Agreement, and all representations contained herein shall be true and correct as of the date of this Agreement, and as of the date of Closing, and Seller shall execute a closing certificate certifying to such.
- d. Covenants. Seller shall have fully performed and complied with its obligations, covenants and agreements under this Agreement.

14. 1031 EXCHANGE.

At either party's request not later than five (5) business days prior to the Closing (the "Requesting Party"), the other party will take all actions reasonably requested by the Requesting Party in order to effectuate all or any part of the transactions contemplated by this Agreement as a forward or reverse like-kind exchange for the benefit of the Requesting Party in accordance with Section 1031 of the Internal Revenue Code and, in the case of a reverse exchange, Rev. Proc. 2000-37, including executing an instrument acknowledging and consenting to any assignment by the Requesting Party of its rights (but not its obligations) hereunder to a qualified intermediary or an exchange accommodation titleholder. In furtherance of the foregoing and notwithstanding anything contained in this Agreement to the contrary, the Requesting Party may assign its rights under this Agreement to a "qualified intermediary" or an "exchange accommodation titleholder" (which may be a title company selected by the Seller) in order to facilitate, at no cost or expense to the other party, a forward or reverse like-kind exchange under Section 1031 of the Internal Revenue Code; provided, however, that such assignment will not relieve the Requesting Party of any of its obligations hereunder. If so requested, the other party will issue all closing documents to the applicable qualified intermediary or exchange accommodation titleholder if so directed by the Requesting Party prior to Closing. Notwithstanding the foregoing, the other party shall not be required, solely for the purpose of the other party's cooperation with Buyer's like-kind exchange, to incur any additional cost, obligation or liability, and the Requesting Party shall indemnify, defend and hold the other party harmless from and against any and all such costs, obligations or liabilities (including reasonable attorneys' fees), proceedings and causes of actions of any kind incurred or suffered by the other party and solely attributable to such like-kind exchange transaction. In no event shall the Closing be delayed because of the Requesting Party's like-kind exchange transaction. The provisions of this Section 13 shall survive the Closing of this Agreement.

15. OBLIGATIONS OF PARTIES AT CLOSING.

At the Closing, the parties hereby shall satisfy and perform the following:

- a. Seller shall:
 - i) Deliver a Limited Warranty Deed conveying marketable title to the Premises to Buyer, free and clear of all tenancies and encumbrances, except the Permitted Exceptions,

- ii) Deliver a mutually acceptable Bill of Sale assigning the personal property owned by Seller and used in connection with the operations of the Premises,
- iii) Deliver a mutually acceptable closing certificate certifying as to the accuracy of the representations and warranties as the Closing,
- iv) Provide a fully insured closing through the Title Company (at Seller's expense) which Title Company shall markup and agree to insure marketable title in Buyer subject only to the Permitted Exceptions effective as of the moment of Closing,
- v) Deliver a closing statement, affidavit and any other documents required from Seller by the Title Company in order to issue the title policy, including, but not limited to, a Non-foreign Affidavit and an Owner's Affidavit certifying, among other things, that there are no unpaid mechanic's liens affecting the Premises, that there has been no construction work on the Premises for which payment has not been made, that all taxes and special assessments (if any) affecting the Premises which have become due and payable have been paid in full, that the Seller is in possession of the Premises and that there are no unrecorded leases affecting the Premises, and any other affidavit, statement, or other document reasonably required by Seller or required by the Title Company, and
- vi) Deliver to Buyer possession of the Premises, free and clear of all leases, tenancies, and occupancies.

b. Buyer shall:

- i) Deliver the closing statement and any other documents required from Buyer by the Title Company in order to issue the title policy; and
- ii) Pay the Purchase Price to Seller in accordance with Section 2.

- c. The parties agree (i) to share, equally, normal closing costs of the Title Company, (ii) that Seller shall be required to pay (or provide a credit) for any unpaid 2021 or 2022 taxes which are due and payable as of the date of Closing and issuance of an Owner's title policy for the Premises; and (iii) Buyer shall be solely responsible for all of its costs related to its due diligence investigation of the Premises.

16. MISCELLANEOUS.

- a. Assignment. The parties agree that (i) this Agreement is fully assignable by Buyer to an entity which is wholly owned or controlled by Buyer or persons or entities which currently own and control Buyer upon written notice to Seller and without Seller's consent; and (ii) this Agreement is not otherwise assignable by either party without the prior written consent of the other party.
- b. Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, simplify, or modify the terms and provisions of this Agreement.

- c. Number and Gender of Words. Whenever the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.
- d. Remedies. In the event of a breach of this Agreement by Seller, Buyer may terminate this Agreement and receive return of the Deposit, or, in the alternative, have the right for specific performance. In the event of a breach of this Agreement by Buyer, Seller shall receive as its exclusive remedy the full Deposit. The non-breaching party shall, in addition to the above remedies, be entitled to recover from the breaching party its attorney fees, expenses and costs arising from such breach and incurred in enforcing this Agreement, except neither party shall be able to recover consequential damages such as loss of income.
- e. Notices. Notice from one party to another relating to this Agreement shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address, telex number or facsimile number set forth under its signature by any of the following means: (a) hand delivery; (b) registered or certified mail, postage prepaid, with return receipt requested; (c) Federal Express or like overnight courier service; (d) electronic delivery (such as email); or (e) facsimile, telex or other wire transmission with request for assurance of receipt in a manner typical with respect to communications of that type. Notice made in accordance with this section shall be deemed delivered on receipt if delivered by hand or wire transmission, on the third business day after mailing if mailed by first class, registered or certified mail, or on the next business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. The current addresses of the parties are as follows:

Buyer:

Grand Mere Development, LLC.
Norrie Daroga- Representative
445 W. Oklahoma Ave. Ste 1
Milwaukee, WI 53207

Seller:

City of Fort Wayne Board of Public Works
c/o: Shan Gunawardena, Chairman, Board of Public Works
200 E Berry Street, Suite 210
Fort Wayne, IN 46802

- f. Governing Law. It is intended by the parties that the laws of the State of Indiana shall govern the validity, construction, enforcement and interpretation of this Agreement.
- g. Entirety and Amendments. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements, understandings, warranties and representations, if any, whether verbal or written, relating to the Premises, and may be amended or supplemented only by an instrument in writing executed by both parties hereto.

- h. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable, said provision shall be fully severable; the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Agreement; and the remaining provisions of the Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from the Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible which is and shall be legal, valid and enforceable.
- i. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
- j. Parties Bound. This Agreement shall be binding upon, inure to the benefit of and be enforceable by and against Seller and Buyer, and their respective successors and assigns.
- k. Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed, and delivered by Seller and Buyer, Seller and Buyer agree to perform, execute, and deliver or cause to be performed, executed, and delivered at the closing or after the closing any and all such further and reasonable acts, deeds, and assurances as may be reasonably necessary to consummate the transaction contemplated hereby in accordance with this Agreement.
- l. No Third-Party Beneficiaries. Except as otherwise specifically provided herein, nothing expressed or implied in this Agreement is intended, or shall be construed to confer upon or give any person, firm or corporation, other than Seller and Buyer, any rights or remedies upon or by reason of this Agreement.
- m. Survival of Representations. The representations, warranties, covenants and agreements of Buyer and Seller contained in this Agreement shall survive the closing.
- n. Improvements. Buyer and Seller acknowledge and agree that Seller shall remove, prior to Closing, any or all of the buildings, improvements (not including paved surfaces), equipment and personal property located on the Premises.
- o. Utilities. Water, sewer, gas and electric connections are available at the property line of the Premises. Buyer is responsible for any service improvements or upgrades necessary for its intended use of a car wash.
- p. Expired Lease. Buyer and Seller acknowledge and agree that a tenant currently occupies and uses a portion of the parking lot located upon the Premises and uses the parking lot pursuant to a month-to-month lease with Seller. Seller agrees that the month-to-month lease shall be terminated prior to Closing as provided in this Agreement.

- q. Easement. Seller reserves the right to declare a perpetual and exclusive easement prior to Closing of fifteen (15) feet to the north, east and south measured from the edges of the concrete pad supporting the fiber optics utility box located upon the west property line of the Premises. The easement shall be limited in use to the maintenance, repair, and replacement of the fiber optics utility box (collectively, "Activities") and the owner of the Premises shall be allowed to pave over the easement so long as such paving does not prohibit access to the fiber optics utility box. The owner of the Premises shall be responsible for the cost of all paving permitted within the easement. The Seller and/or the grantee of the easement shall not be responsible for the cost of any repair or repaving necessary as a result of Seller's or the grantee's maintenance, repair or replacement of the fiber optics utility box as permitted by the easement. The easement shall be deemed a Permitted Exception.
- r. Curb Cut. Buyer and Seller acknowledge and agree that a new curb cut along E. Coliseum Boulevard is essential for Buyer's intended use of the Premises ("Curb Cut"). Seller has shared the location of the Curb Cut with Buyer as Exhibit B attached. This requires approval from the State of Indiana and other government bodies as may be the case and shall be performed at Seller's sole cost and expense with regard to engineering, survey, legal and related costs and expenses. Seller acknowledges that Buyer will be incurring costs and expenses in advance of Curb Cut approval and will be performing its engineering, architectural, soil design and other activities in reliance of the location, ingress/egress and the size of Curb Cut. Seller agrees to reimburse Buyer for actual out-of-pocket costs and expenses incurred by Buyer during due diligence, in an amount not exceeding Fifty Thousand Dollars (\$50,000.00) ("Termination Fee") should the location, size or any other ingress/egress change from Exhibit B as presented herein causing the Buyer i) to have to modify its site plan or any other design effort to date or ii) if the Buyer becomes unable to make the new / relocated Curb Cut to work for intended use in its sole discretion causing cancellation of this Agreement. The Termination Fee shall only be payable in the event (a) the Curb Cut is not approved in the location shown on Exhibit B; or, (b) the Curb Cut is approved in a location that is not viable as determined by Buyer pursuant to this Agreement; and (c) the Buyer elects to terminate this Agreement as a result of (a) or (b).
- i) If the Curb Cut is not decided within the Contingency Period, Buyer's right to terminate this Agreement and obtain a return of its Security Deposit shall be extended until the earlier of (a) the date that Seller receives the final approval(s) for the new location of the Curb Cut and provides the same to the Buyer; or (b) July 1, 2024.
- ii) If the Curb Cut is approved in the desired location, the parties shall proceed to consummate the transactions contemplated in this Agreement. If the Curb Cut is denied within the Contingency Period, Buyer may terminate this Agreement by written notice to Seller within the Contingency Period and receive a return of the Security Deposit and the Termination Fee and neither party shall have any further rights or obligations to the other under this Agreement.
- iii) If the Curb Cut is approved in a location other than Buyer's desired location in Exhibit B, Buyer shall have thirty (30) days after receipt of notice from Seller to determine if the alternate location is viable. Buyer shall notify Seller whether the alternate location is viable within the thirty (30) day period described herein.

- iv) If the alternate location is not viable, Buyer may terminate this Agreement by written notice delivered to Seller within the thirty-day period and receive a return of the Security Deposit and the Termination Fee and neither party shall have any further rights or obligations to the other under this Agreement.
- v) If the alternate location is viable, Buyer shall notify Seller in writing and the parties shall proceed to consummate the transactions contemplated in this Agreement in accordance with the following modified timeline and conditions:
 - (A) The Contingency Period shall be extended until the earlier of (a) the date that Buyer obtains approval of the Preliminary Development Plan and re-zoning approval from the requisite governing authorities; or, (b) July 31, 2024; and
 - (B) Seller shall reimburse Buyer for all actual reasonable out-of-pocket expenses incurred by Buyer caused by or resulting from the change in location, in an amount not to exceed Twenty Thousand Dollars (\$20,000.00).
 - (C) In the event that Buyer shall notify Seller that the alternate location is viable then Seller shall have no obligation to pay the Termination Fee in the event that this Agreement is terminated for any reason thereafter.
- s. 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."
- t. Seller shall promptly seek all additional public approvals necessary under Indiana Law to consummate the terms and conditions of this Agreement and shall obtain such approvals on or before the expiration of ninety (90) days from the Effective Date. In the event Seller is unable to obtain all additional public approvals necessary to consummate the terms and conditions of this Agreement on or before the expiration of ninety (90) days from the Effective Date, then the Seller may terminate this Agreement by written notice to Buyer prior to the expiration of ninety (90) days from the Effective Date, Buyer shall receive a refund of the Security Deposit, Buyer shall receive the Termination Fee and neither party shall have any additional liability pursuant to this Agreement.

IN WITNESS WHEREOF, the undersigned executed and delivered this Real Estate Purchase Agreement on the date set forth below the name of each, effective as of the date first above written.

"BUYER"

Grand Mere Development, LLC

By: N. T. Daroga
Norrie Daroga- Representative

Dated: November 27, 2023

"SELLER"

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

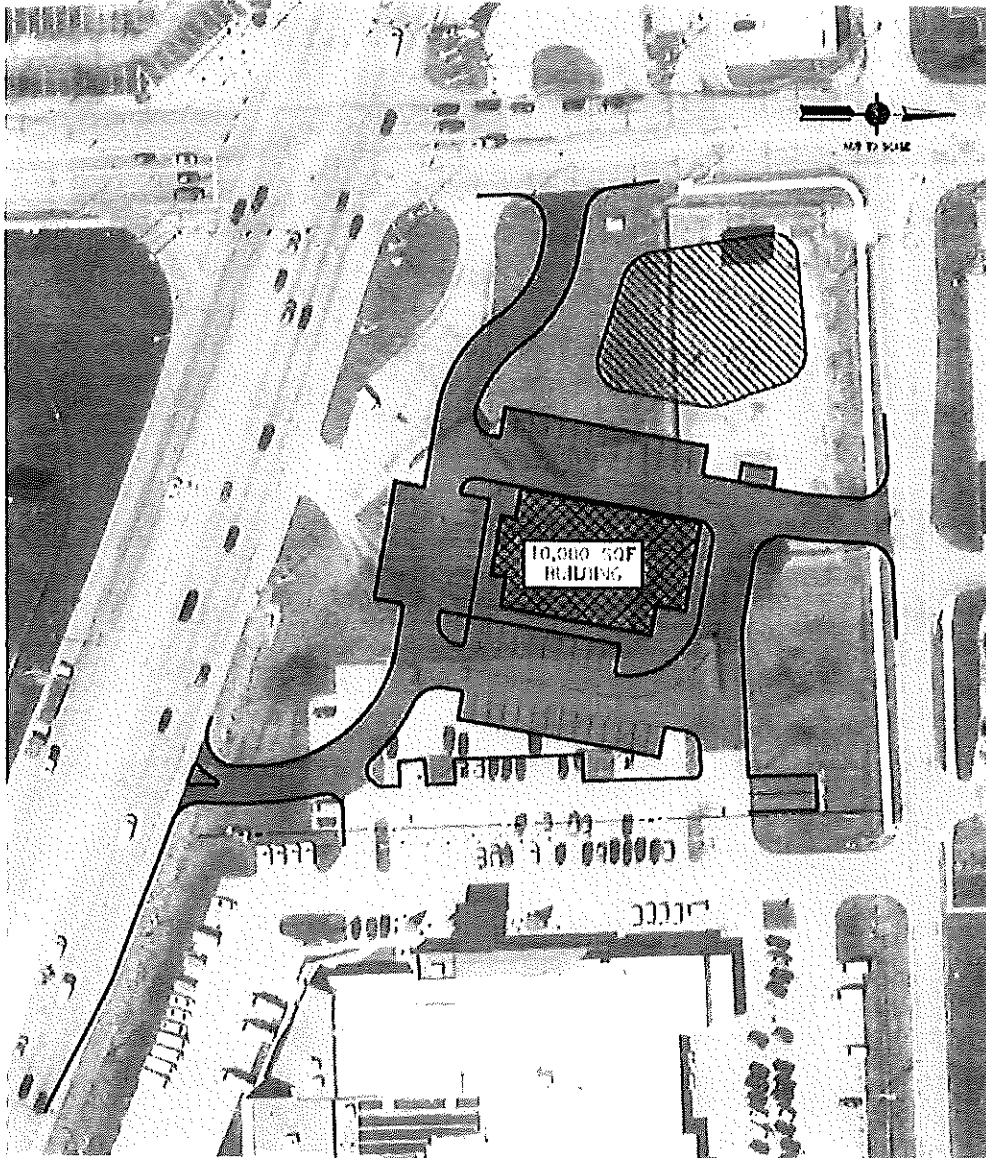
By: Shan R. Gunawardena
Printed: SHAN R. GUNAWARDENA
Its: CHAIR

Dated: Nov 22nd, 2023

EXHIBIT A
DIAGRAM OF PREMISES



EXHIBIT B
LOCATION OF CURB CUT



Proposed Use Building - To be determined

EXHIBIT B (Cont'd)

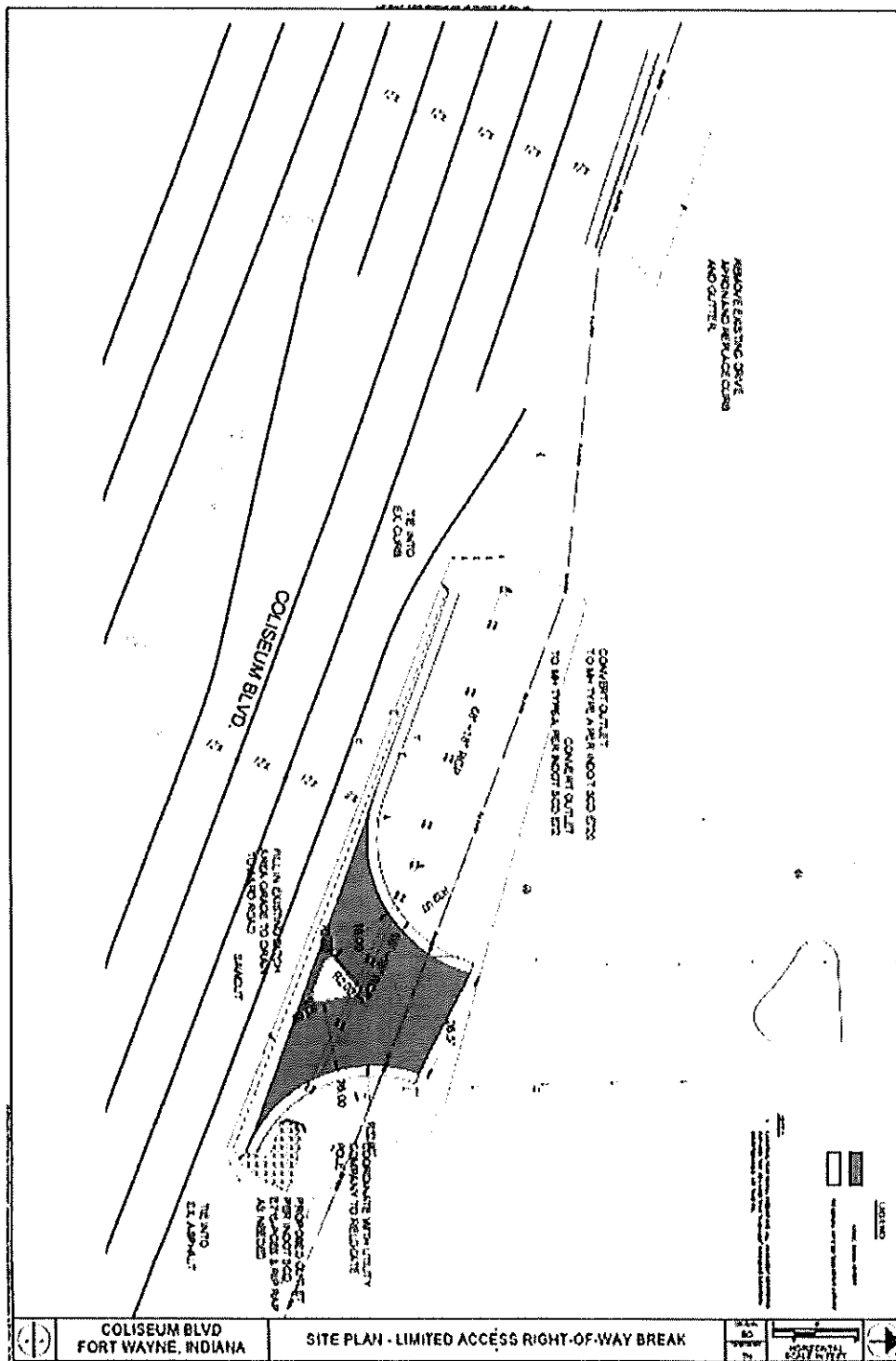


EXHIBIT B (Cont'd)

RIGHT OF WAY

Situated in the north half of the northeast quarter of section 25, township 31 north, range 12 east, in Allen county, and being more particularly described as follows:

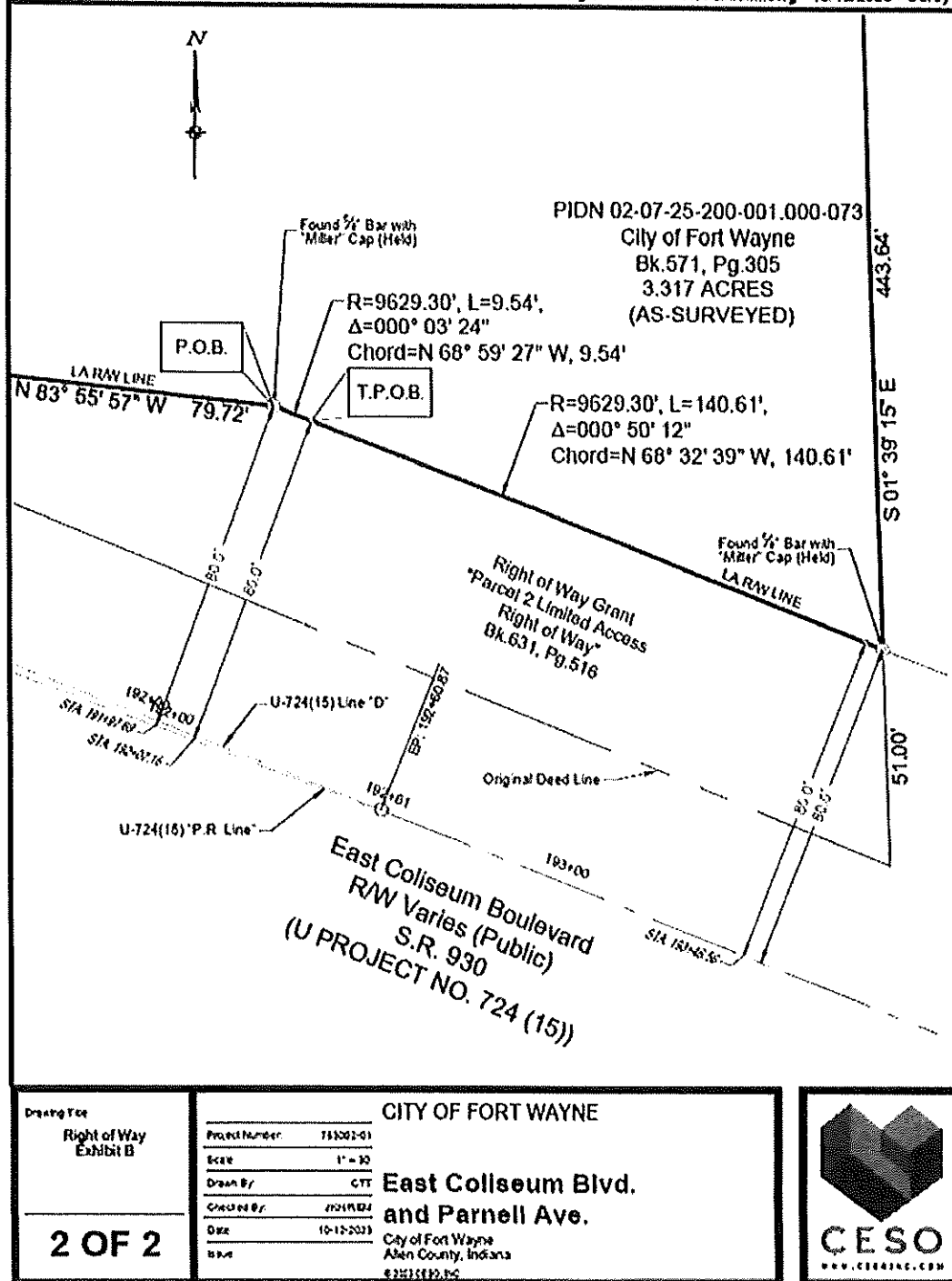
Commencing at a found 5/8" bar with "Miller Cap on the northerly limited access right of way line of East Coliseum Boulevard (S. R. 930) being U-724(15) "P.R. Line" at said point being 80' left of centerline Station 191+97.69 P.R. Line as shown on right of way plan U.S. 30 By-Pass Sec. U PROJECT NO. 724 (15). Dated 1963.

Thence along said limited access right of way, along a curve to the right, having a Radius of 9809.30 feet, an Arc Length of 9.54 feet, a Delta Angle of 00°03'24", and subtended by a chord bearing North 69°59'27" West, a distance of 9.54 feet to a point 80' left of centerline Station 192+07.16 P.R. Line to the True Point of Beginning;

Thence continuing along said limited access right of way, along a curve to the right, having a Radius of 9809.30 feet, an Arc Length of 140.61 feet, a Delta Angle of 00°50'12", and subtended by a chord bearing North 68°32'39" West, a distance of 140.61 feet to a point 80' left of centerline Station 193+46.56 P.R. Line and being the end of the line described.

EXHIBIT B (Cont'd)

W:\PROJECTS\Fort Wayne Indiana\763002-01 Coliseum Blvd\04-SURVEY\DWG\763002 LA - RW Exhibit.dwg - 10/12/2023 - Corey Te



GRIFFIN REAL ESTATE SERVICES, INC.

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

November 3, 2022

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

Dear Mr. Carmichael:

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

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

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

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

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

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

Extraordinary Assumption(s)

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

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

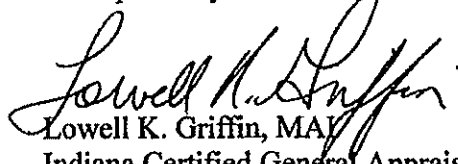
Hypothetical Condition(s)

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

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

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

Respectfully submitted,


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

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

Verne V. Mitchell, III, MAI

November 3, 2022

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

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

Dear Mr. Carmichael:

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

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

Our opinion of the property's market value is:

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

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

Respectfully submitted,

VERNE V. MITCHELL & ASSOCIATES, INC.



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



Alexander C. Mitchell
Indiana Appraiser Trainee
License Number TR41400023

VVM/ms

AMENDED RESOLUTION # 110-12-19-23-1

**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, Division of Public Works (the "DPW"); and

WHEREAS, DPW owns certain real estate located on the northeast corner of East Coliseum Boulevard and Parnell Avenue, commonly known as 1103 East Coliseum Boulevard, Fort Wayne, IN 46805 (the "Property") that it wishes to sell to promote an economic development project pursuant to IC 36-1-11-4.2; and

WHEREAS, the Property was not acquired by the DPW through eminent domain; 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 Three Million One Hundred Eighty-Three Thousand Dollars (\$3,183,000.00); and

WHEREAS, DPW has received an offer to purchase the Property from Grand Mere Development, LLC ("Grand Mere") for a purchase price of Three Million One Hundred Eighty-Three Thousand Dollars (\$3,183,000.00), which is equal to the average of the two appraisals; and

WHEREAS, the Board has published notice of the amount of the offer made by Grand Mere 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 December 19, 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 authorizes the sale of the Property by DPW to Grand Mere for a purchase price of \$3,183,000.00.

2. The Board hereby authorizes Director of Public Works 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.

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

* * * * *

APPROVED this 9th day of January 2024.

BOARD OF PUBLIC WORKS

BY: [Signature]
Shan Gunawardena, Chair

BY: [Signature]
Kumar Menon, Member

BY: ABSENT
Chris Guerrero, Member

ATTEST: [Signature]
Michelle Fulk-Vondran, Clerk

COUNCIL DIGEST SHEET

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

RFPs, BIDS, OTHER PROJECTS

Bid/RFP#/Name of Project	Purchase Agreement between City of Fort Wayne, Indiana, Board of Public Works and Grand Mere Development, LLC for a property located at 1103 E Coliseum Blvd in Washington Township, Allen County, Indiana
Awarded To	Grand Mere Development, LLC
Amount	\$3,183,000.00
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, Board of Public Works and Grand Mere Development, LLC for a property located at 1103 E Coliseum Blvd in Washington 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

January 23, 2024

City Council Members
City of Fort Wayne

RE: City of Fort Wayne, Indiana, Board of Public Works/Grand Mere Development,
LLC Purchase Agreement 1103 E Coliseum Blvd

Dear Council Members:

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

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

We are asking for Council to approve this sale.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Carmichael".

Christopher Carmichael
Property Manager

ENGAGE • INNOVATE • PERFORM

CITIZENS SQUARE

200 E. Berry St. • Fort Wayne, Indiana • 46802 • www.cityoffortwayne.org
An Equal Opportunity Employer