

BILL NO. R-24-12-15

RESOLUTION NO. _____

**A RESOLUTION OF THE
COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA,
REGARDING THE APPROVAL OF THE EXPENDITURE OF 2023
SUPPLEMENTAL
LOCAL INCOME TAX REVENUES FOR THE ACQUISITION BY
THE FORT WAYNE REDEVELOPMENT COMMISSION OF LAND AND
IMPROVEMENTS LOCATED AT 1218-1234 WELLS STREET**

WHEREAS, the City of Fort Wayne Redevelopment Commission (the “Commission”), desires to acquire certain real estate located at 1218, 1220, 1222, and 1234 Wells Street, Fort Wayne, Indiana, 46808, (PIN #02-12-02-181-004.000-074, 02-12-02-181-003.000-074, 02-12-02-181-002.000-074, and 02-12-02-181-001.000-074 (the “Real Estate”), which Real Estate is depicted in attached Exhibit A; and

WHEREAS, on December 9, 2024, the Commission approved a Purchase Agreement for the Real Estate (the “Purchase Agreement”), attached hereto as Exhibit B, which Purchase Agreement requires as a condition to close the approval by the Common Council for the funds necessary for the acquisition of the Real Estate; and

WHEREAS, the Commission has requested from the Common Council approval for the expenditure of 2023 Supplemental Local Income Tax Revenues (“Supplemental LIT”) for payment of the purchase price in an amount not to exceed One Million Four Hundred Ninety Thousand and 00/100 Dollars (\$1,490,000), plus closing costs and associated expenses pursuant to the Purchase Agreement (collectively, the “Acquisition Costs”); and

WHEREAS, Common Council approved the earmark of funds from Supplemental LIT in 2023 for the purpose of strategic property acquisition to support

1 redevelopment initiatives to enhance riverfront revitalization efforts and long-term
2 economic development goals; and

3 WHEREAS, these funds were reappropriated for use in 2024 to continue
4 supporting Commission's property acquisition efforts; and

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6 WHEREAS, acquisition of the Property will provide substantial
7 community benefits in that: (i) the Property is within the planning area of the Riverfront
8 Development Implementation Framework, (ii) redevelopment of the site will bring more
9 people, businesses, and vibrancy to north side of the river, (iii) new pedestrian-oriented
10 development will improve connectivity between the riverfront, the Wells Street Corridor
11 and the Bloomingdale Neighborhood, and (iv) redevelopment of the site will protect
12 substantial public investments in Promenade Park and other nearby projects.
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15 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
16 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

17 1. The Common Council finds, determines, ratifies and confirms that
18 the acquisition of the Real Estate is in the best interests of the citizens and taxpayers of
19 the City of Fort Wayne, will support the redevelopment goals and objectives of the City
20 of Fort Wayne, and will support the ongoing riverfront development goals previously
21 approved within the area.
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23 2. The Common Council does hereby approve expenditure of
24 Supplemental LIT for the Acquisition Costs.
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3. This Resolution shall be in full force and effect from and after the time it has been adopted by Common Council, approved by the Mayor and otherwise executed and delivered in accordance with any and all laws appertaining thereto.

Council Member

APPROVED AS TO FORM AND LEGALITY:

Malak Heiny, City Attorney

REAL ESTATE PURCHASE AGREEMENT

1. This Real Estate Purchase Agreement (“**Agreement**”) is made to be effective the ____ day of December, 2024 (the “**Effective Date**”), by and among JGA Property, Inc., an Indiana corporation (“**Seller**”) and The City of Fort Wayne, Department of Redevelopment, acting by and through the Fort Wayne Redevelopment Commission (“**Buyer**”).
2. **PROPERTY:** Seller agrees to sell and convey to Buyer, and Buyer agrees to buy from Seller the real property depicted on Exhibit A attached hereto and incorporated herein, commonly known as 1234 N. Wells Street, Fort Wayne, Indiana, with existing site improvements, and all privileges and appurtenances pertaining thereto, including but not limited to all of Seller’s right, title, and interest in and to any and all easements, adjacent streets, utility reservations, alleys, rights of way, strips and gores of land, mineral rights, water and water rights, wells, well rights and permits, water and sewer taps, sanitary or storm sewer capacity or reservations, rights under utility agreements with any applicable governmental or quasi-governmental entities or agencies with respect to the providing of utility services to such real property, tenements, hereditaments, privileges, licenses and appurtenances, reversions, and remainders in any way belonging, remaining, or appertaining thereto and together with all improvements, fixtures, personal property, trees, timber, or other crops and plants and minerals located thereunder or thereon (collectively referred to as the “**Property**”).
3. **PRICE:** The purchase price for the Property (the “**Purchase Price**”) shall be One Million, Four Hundred Ninety-Two Thousand and 00/100 Dollars (\$1,492,000.00). The Purchase Price shall be payable at Closing (as defined below) and subject to the prorations and adjustments hereinafter described and in accordance with the terms and conditions stated in this Agreement.
4. **EARNEST MONEY:** Five Thousand Dollars (\$5,000) will be deposited by Buyer, as “**Earnest Money**,” with Titan Title Services, LLC, Attn: Andrew Wartenbe, as “**Escrow Agent**” or “**Title Company**,” within ten (10) days of the Effective Date. If this Agreement is terminated by Buyer prior to the expiration of the Due Diligence Period (as defined in **Section 7** herein), or pursuant to a Seller Default (as hereinafter defined), the Earnest Money shall be immediately returned to Buyer. The term “**Earnest Money**” shall include any interest thereon. The Earnest Money shall be applied as a credit towards the Purchase Price at Closing. Upon expiration of the Due Diligence Period, and provided that this Agreement has not been terminated by Buyer, the Earnest Money shall become non-refundable to Buyer (except as otherwise set forth herein in connection with a Seller Default or the failure of a closing condition).
5. **CLOSING:** Subject to the provisions of this Agreement, the closing of the sale of the Property (the “**Closing**”) shall take place via escrow with the Escrow Agent thirty (30) days after expiration of the Due Diligence Period or such earlier date (which may be prior to or following the expiration of the Due Diligence Period) as chosen by the mutual agreement of the parties (the “**Closing Date**”).
6. **POSSESSION:** Seller, or an affiliate of Seller who operates a restaurant on the Property commonly known as “Don Chavas” (the “**Affiliate**”), shall have the right to remain in possession of the Property for a period of up to eighteen (18) months after the Closing Date (the “**Post Closing Possession Period**”). The Post Closing Possession Period shall be governed by the terms of a standard Commercial Real Estate Lease (the “**Holdover Lease**”) negotiated in good faith between the parties and containing such terms and conditions as are reasonable and customary in Allen County, Indiana; provided, however, for avoidance of doubt, and notwithstanding anything contained herein to the contrary, the Holdover Lease shall contain the following terms and conditions: (1) Buyer will not charge Seller or the Affiliate any rent during the term of the Holdover Lease; (2) Seller and the Affiliate will hold Buyer harmless and indemnify Buyer from any losses

Buyer may sustain during the term of the Holdover Lease; (3) Seller and the Affiliate shall carry property and casualty insurance for the full replacement value of the improvements located on the Property, and general liability insurance in amounts acceptable to Buyer in its reasonably business judgment; and (4) Seller and the Affiliate shall maintain the Property, and the improvements thereon, at its expense, in good condition and repair, subject to ordinary wear and tear. Seller and Buyer shall finalize the Holdover Lease prior to the Closing Date.

Following the expiration or earlier termination of the Holdover Lease, possession of the Property shall be delivered to Buyer in its present condition as of the Effective Date hereof, subject to ordinary wear and tear and further subject to any damage caused by the Examinations (as defined in Section 7 herein).

7. DUE DILIGENCE PERIOD:

- A. Buyer shall have ninety days (90) following the later of (i) the Effective Date and (ii) Buyer's receipt of the Seller Documents (as defined below) (the "**Due Diligence Period**") to conduct such due diligence as Buyer may in its sole judgment desire, including but not limited to engineering studies, surveys, soil tests, environmental assessments, inspections, and other examinations (collectively, "**Examinations**"); and to review title and survey.
- B. Buyer's obligations under this Agreement shall be conditioned upon Buyer's review and approval, in its sole and absolute discretion, of the Seller Documents (as hereinafter defined) and the Property and all aspects thereof, including by way of illustration but not limitation, all physical and environmental matters relating to the Property.

Upon commencement of the Due Diligence Period and throughout the term of this Agreement, Buyer and its representatives and agents shall have the right to enter upon the Property to perform and complete the activities and investigations set forth herein. The Examinations are to be made at Buyer's expense, and Buyer shall be liable for any damage (ordinary wear and tear excepted) caused to the Property by Buyer or Buyer's agents during the Examinations. Further, Buyer agrees to indemnify and hold harmless Seller from and against any damages or claims for injuries to any persons or to the Property that arise as a direct result of the Examinations, except to the extent such damages or claims are caused by or arise from (i) preexisting conditions, (ii) hazardous materials not first placed on the Property by Buyer, its agents, or representatives, (iii) mere discovery of existing conditions, facts or circumstances that adversely affect (or may adversely affect) the value of the Property, or (iv) Seller's or Seller's employees' or agents' negligence or intentional misconduct which adversely affects the value of the Property or results in a third-party claim, which indemnity shall survive the Closing or any earlier termination of this Agreement.

- 8. **TAXES:** All real property taxes assessed for any prior calendar year and remaining unpaid, shall be the obligation of Seller, and all taxes assessed for the year of Closing and payable in the following year shall be prorated between Seller and Buyer on a calendar year basis as of the Closing Date. If the taxes for the Property have not been determined at the Closing of the transaction, said taxes shall be assumed to be the same as the prior year for the purpose of such proration and a credit at Closing shall be given to Buyer for taxes not due and payable as of the Closing Date, but accruing prior to the Closing Date.

9. **RISK OF LOSS AND INSURANCE:** Seller shall bear the entire risk of loss of the Property until Closing. Seller's insurance shall be canceled as of the Closing Date, and Buyer shall be responsible for providing its own insurance. In the event any damage or destruction to the Property is not fully repaired prior to Closing, Buyer, at its option, may either (a) terminate this Agreement, or (b) elect to close the transaction, in which event Seller's right to all insurance proceeds resulting from such damage or destruction shall be assigned in writing by Seller to Buyer, and Seller shall reimburse Buyer for any deductible amount.
10. **SURVEY:** Buyer may obtain, at Buyer's expense, a staked survey, which survey shall comply with Minimum Standard Detail Requirements meeting the current accuracy standards for ALTA/NSPS Land Title Surveys (the "**Survey**"). The Survey shall be certified as of a current date by a surveyor registered in the State of Indiana and shall show the exact location of all improvements, building setback lines, easements, rights-of-way, and encroachments affecting the Property, and all other matters apparent thereon, and the relation of the Property to all adjacent properties and public thoroughfares. Further, the Survey shall reflect whether the Property is located in a designated flood zone area and shall certify the gross acreage of the Property.
11. **TITLE:** Buyer shall obtain, at Buyer's expense, a Commitment for an ALTA Owner's policy of Title Insurance with extended coverage (the "**Commitment**"). Buyer shall deliver to Seller a copy of the Commitment within five (5) days of Buyer's receipt thereof.
12. **TITLE AND SURVEY APPROVAL:** If Buyer has an objection to items disclosed in the Commitment or the Survey (as the same are updated from time to time), Buyer shall make written objections to Seller within thirty (30) days of the date of delivery of all of the Commitment, the recorded documents and the Survey (or applicable update thereof which disclosed additional matters). If no such objections are made, Buyer shall be deemed to have waived all objections to matters disclosed in the Commitment, other than liens of a monetary nature which may be removed by payment of a liquidated sum ("**Permitted Exceptions**"). If Buyer makes such objections, Seller shall have fifteen (15) days from the date such objections are disclosed to cure the same. If the objections are not satisfied within such time period, Buyer may either (a) terminate this Agreement by written notice to Seller prior to Closing and Escrow Agent shall promptly return the Earnest Money to Buyer, or (b) waive the unsatisfied objections (which shall be added to the "**Permitted Exceptions**") and close the transaction in accordance with this Agreement. Any endorsements to the Commitment or the Title Policy requested by Buyer shall be at Buyer's expense.
13. **PRORATIONS AND SPECIAL ASSESSMENTS:** Any and all income and ordinary operating expenses of the Property, including, but not limited to, rent and public utility charges, if any, shall be prorated as of the day before the Closing Date. Any special assessments applicable to the Property for municipal improvements due and payable prior to the Closing Date and which benefit the Property shall be paid by Seller. Buyer will assume and agree to pay all special assessments for municipal improvements which become due and payable on and after the Closing Date. Notwithstanding the foregoing, Buyer shall not be obligated for payments under any management, service or other contractual agreements affecting the Property and the same shall be terminated prior to Closing unless Buyer expressly elects to assume the same.
14. **SALES EXPENSES:** Seller and Buyer agree that all sales expenses are to be paid in cash prior to or at the Closing.
- A. **SELLER'S EXPENSES:** In addition to the prorations provided in Sections 8 and 13, Seller agrees to pay all costs of releasing existing loans and recording the releases, and the

following costs: taxes accruing as of the Closing Date; one-half of any and all closing fees; and other expenses not stipulated to be paid by Buyer under other provisions of this Agreement.

- B. **BUYER'S EXPENSES:** In addition to the prorations provided in **Sections 8 and 13**, Buyer agrees to pay the cost of the Survey; costs of the premium for the Owner's Title Insurance Policy; the fees of Escrow Agent; one-half of any and all closing fees; and other expenses to be paid by Buyer under other provisions of this Agreement.
15. **PRIOR USE:** Buyer is aware and acknowledges that a dry-cleaning facility was historically located on the Property (the "**Prior Use**"), and that as a result, hazardous waste and/or other contaminants of concern ("**Hazardous Substances**") may be located thereon. To the extent any environmental reports obtained by Buyer during the Examinations identify the existence of Hazardous Substances at, under or emanating from the Property as a result of the Prior Use, Buyer agrees to provide to Seller, at Closing, a release and waiver agreement (the "**Release**") by which all rights or remedies that Buyer may have against Seller at or under law or otherwise with respect to any Hazardous Substances, and the remediation costs associated therewith, shall be waived and released as to Seller.
16. **RELOCATION:** Prior to Closing, Seller and Buyer shall have entered into a real estate purchase agreement (the "**Relocation Agreement**") pursuant to which Buyer (the Redevelopment Commission) shall agree to provide to Seller (JGA) or an affiliated entity to be approved by the Redevelopment Commission, which approval shall not be unreasonably withheld, conditioned or delayed, the right to construct, own, and operate a new restaurant building on property owned by the Redevelopment Commission and located at 1302 Wells Street, Fort Wayne, Indiana 46808 ("**Relocation Site**"). The Relocation Agreement shall contain commercially reasonable terms including without limitation the following: (i) Redevelopment Commission shall convey title to the Relocation Site to JGA for a nominal cost, subject to all necessary approvals and applicable laws (including those governing the disposition of real estate), (ii) within a period of five (5) years of the effective date of the Relocation Agreement, JGA shall secure construction and permanent financing for the new restaurant prior to closing on the Relocation Site, (iii) JGA shall provide and Redevelopment Commission shall approve preliminary and final construction drawings for the new restaurant, and (iv) the terms of the Relocation Agreement and other commercially reasonable terms shall be integrated into an Economic Development Agreement. Any incentives set forth in an Economic Development Agreement would be subject to the approval of the Redevelopment Commission and, if applicable, other governmental bodies and may be executed following the Closing.
17. **DEFAULT:** If Buyer breaches this Agreement and is in default, Seller may treat this Agreement as being terminated and receive as its sole remedy the Earnest Money as liquidated damages and Seller shall have no further right or remedy at law or in equity against Buyer. In the event that Seller fails to timely comply with all conditions, covenants and obligations hereunder, or if any of the representations and warranties of Seller contained herein are untrue either when made or become untrue any time thereafter, or if Seller otherwise breaches this Agreement, such failure or misrepresentation shall be an event of default by Seller (a "**Seller Default**"), then (i) notwithstanding any other provision of this Agreement to the contrary, the Earnest Money shall be promptly returned to Buyer and this Agreement shall be terminated, or (ii) Buyer may seek specific performance, and in either of such events, Buyer shall have no further right or remedy at law or in equity against Seller.

18. **ATTORNEY'S FEES:** Any party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party brought for a breach of this Agreement shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.

19. **ESCROW:** The Earnest Money shall be deposited with Escrow Agent with the understanding that (a) Escrow Agent is not a party to this Agreement and does not assume or have any liability for performance or non-performance of any party and (b) before the Escrow Agent has any obligation to disburse the Earnest Money in the event of dispute, it has the right to require from all signatories a written release of liability of the Escrow Agent, termination of the Agreement and authorization to disburse the Earnest Money, all as shall be set forth in a written escrow agreement with Escrow Agent.

20. DUTIES OF BUYER AND SELLER AT CLOSING:

A. At the Closing, Seller shall deliver to Buyer, the following:

- (1) A duly executed and acknowledged General Warranty Deed conveying to Buyer good, marketable, and indefeasible title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, reservations and restrictions, subject only to the Permitted Exceptions;
- (2) A duly executed and acknowledged Vendor's Affidavit in a form acceptable to Buyer and Title Company;
- (3) An Owner's Title Insurance Policy, with extended coverage, including all endorsements requested by Buyer (the "**Title Policy**") issued by Title Company, in the full amount of the Purchase Price, dated as of Closing, insuring Buyer's fee simple title to the Property to be good, marketable, and indefeasible, subject only to the Permitted Exceptions;
- (4) Evidence of its capacity and authority for the closing of this transaction;
- (5) A certification establishing that no federal income tax is required to be withheld under the Foreign Investment and Real Property Tax Act;
- (6) An executed Indiana Disclosure of Sales Information form complying with I.C. 6-1.1-5.5;
- (7) A quit-claim bill of sale and general assignment conveying any development rights or other intangible property in connection with the Property, if any;
- (8) A duly executed Closing Statement;
- (9) A duly executed Relocation Agreement;
- (10) A duly executed Holdover Lease; and
- (11) All other necessary documents reasonably requested by Buyer to close this transaction.

B. At the Closing, Buyer shall deliver and perform the following:

- (1) Pay the Purchase Price in the form of readily available funds;
- (2) Execute a Closing Statement;
- (3) Execute the Release, if applicable;
- (4) Provide evidence of its capacity and authority for the closing of this transaction, if required by the Title Company;
- (5) Execute a counterpart of the Indiana Disclosure of Sales Information form;
- (6) Execute a counterpart of the Relocation Agreement;
- (7) Execute a counterpart of the Holdover Lease; and
- (8) Execute all other necessary documents reasonably requested by Seller to close this transaction.

21. CONDEMNATION: If prior to Closing, condemnation proceedings are commenced against any portion of the Property or Seller receives notice of a proposed taking prior to Closing, Seller shall immediately notify Buyer of such notice or taking and Buyer shall have the option of either (i) terminating this Agreement by written notice to Seller within fifteen (15) days after Buyer's receipt of said notice, whereupon, notwithstanding any other provision of this Agreement to the contrary, all Earnest Money shall be immediately refunded to Buyer and this Agreement and all rights and obligations created hereunder shall be of no further force or effect; or (ii) requiring Seller to convey the Property, or such portion thereof as Buyer desires, to Buyer pursuant to the terms and provisions hereof and to transfer and assign to Buyer at Closing all of Seller's right, title, and interest in and to any award or other payment made or to be made by reason of such condemnation. Seller and Buyer hereby further agree that Buyer shall have the right to participate in all negotiations with any such governmental authority related to the condemnation of the Property.

22. DOCUMENTS FROM SELLER: Seller shall provide Buyer, within five (5) business days following the Effective Date, copies of documents or information relating to the Property, if in Seller's possession or reasonably available from third parties (the "**Seller Documents**").

23. REPRESENTATIONS AND WARRANTIES OF SELLER: To induce Buyer to execute this Agreement, Seller represents, warrants and covenants to Buyer as follows:

- A. Seller has the full capacity, right, power and authority to execute, deliver, and perform this Agreement and all documents to be executed by Seller pursuant hereto, and all required actions and approvals have been taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto. This Agreement and all documents to be executed pursuant hereto by Seller are and shall be valid, binding upon and enforceable against Seller in accordance with their respective terms.

- B. No action, suit, claim, arbitration, litigation, or other proceedings is pending or, to the best knowledge of Seller's signatory to this Agreement, threatened against Seller or related to the Property or any part thereof.
- C. Seller is not involved in any proceedings by or against Seller in any court under the Bankruptcy Code, or any other insolvency or debtor's relief law, whether federal or state, or for the appointment of a trustee, receiver, liquidator, assignee, or other similar official of Seller or a substantial part of Seller's property.
- D. Seller will not create, permit, or suffer any lien or other encumbrance to attach to or affect the Property, other than the lien of non-delinquent real estate taxes and any liens attributable to Buyer. On the Closing Date, there will be no liens and/or unpaid claims of contractors, materialmen, or laborers which could give rise to a lien against the Property (other than any of the foregoing attributable to Buyer), and there will be no mortgages or security interests against the Property.
- E. Seller has good and marketable fee simple title to the Property, free and clear of all liens, security interests, encumbrances, recorded and unrecorded leases, service contracts, and restrictions of every kind and description, except the Permitted Exceptions, and liens and encumbrances to be released on the Closing Date. There is no offer, option to purchase, right of first offer, or right of first refusal for the sale or lease of all or any portion of the Property.
- F. There are no persons or entities in possession or occupancy of the Property or any part thereof other than Seller and the Affiliate, nor are there any other persons or entities who have possessory or other rights with respect to or interests in the Property or any part thereof.
- G. From the date of execution of this Agreement through the date of Closing, Seller shall continue to maintain the Property in its present condition, and shall not alter any portion of the Property in any material respect or construct any material improvements to the Property.
- H. From the date of execution of this Agreement through the date of Closing, Seller will not enter into any oral or written agreements affecting the Property which might become binding on Buyer or the Property at or after Closing.

The foregoing representations are true, correct, and complete, and the foregoing warranties are in full force and effect and binding on Seller, as of the Effective Date of this Agreement, and shall be true and correct and in full force and effect, and deemed to have been reaffirmed and restated by Seller as of the Closing Date, shall survive Closing, shall not be deemed merged into any instrument of conveyance delivered at Closing, and shall inure to the benefit of and be enforceable by Buyer and its successors and assigns.

Except as provided below, the representations and warranties contained in this **Section 23** will survive for twelve (12) months after the Closing Date, and will thereafter terminate.

24. MISCELLANEOUS:

- A. Any notice or demand required or permitted to be given under this Agreement or by law shall be in writing and deemed to have been duly given (a) on the date of delivery of such notice, if delivered in person by the sending party (or its agent), (b) on the date an electronic mail containing such notice is sent (provided that a duplicate copy is sent contemporaneously by one of the other methods described in this **Section 24(A)**), (c) on the next business day following the date such notice is deposited with a nationally recognized overnight delivery service, or (d) three business days following mailing, if such notice is sent via United States mail, postage prepaid and certified with return receipt requested, in each case to the appropriate address(es) set forth below (or to such other address as a party may designate from time to time by notice to the other party):

Seller: JGA Properties Inc.
1234 Wells Street
Fort Wayne, Indiana 46808
[Email Address]

With a copy to:

David Van Gilder
Fletcher Van Gilder LLP
436 East Wayne Street
Fort Wayne, IN 46802
vangilder@fvglaw.com

Buyer: Fort Wayne Redevelopment Commission
Attn: Executive Director
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
alec.johnson@cityoffortwayne.org

With a copy to:

Tom Trent
Rothberg Logan Warsco LLP
505 East Washington Boulevard
P.O. Box 11647
Fort Wayne, Indiana 46859
ttrent@rothberg.com

- B. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and the jurisdiction and venue with respect to any disputes arising hereunder will be proper only in the city or county in which the Property is located.
- C. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and assigns.
- D. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be

construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- E. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the transaction and cannot be changed except by their written consent.
 - F. Time is of the essence of this Agreement.
 - G. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement. The parties agree that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.
 - H. The provisions of this Agreement and of the documents to be executed and delivered at the Closing are and will be for the benefit of Seller and Buyer (and Buyer's assigns, if any) only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at the Closing.
 - I. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.
 - J. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Agreement falls on a Saturday, Sunday or federal legal holiday, then such date will be extended to the next following date which is not a Saturday, Sunday or federal legal holiday.
25. **PROFESSIONAL FEES:** Seller and Buyer represent to each other that no brokers are involved in this transaction and that Seller and Buyer shall indemnify each other from claims of any other third parties claiming a fee or other compensation for brokerage or other similar services to have been rendered for Seller or Buyer.
26. **COOPERATION FOR EXCHANGE:** If Seller desires to complete a like-kind exchange under Section 1031 of the Internal Revenue Code in connection with the transaction contemplated herein, Buyer agrees to reasonably cooperate in accomplishing the same.
27. **CONFIDENTIALITY:** Buyer and Seller shall maintain the confidentiality of all documents supplied to or obtained by Buyer in connection with its due diligence of the Property, and any related documents, subject to disclosure on a "need to know" basis to attorneys, clients, potential lenders, actual lenders, equity investors, accountants, architects, appraisers, engineers, contractors, consultants, tenants, and potential tenants, as required by applicable law or judicial process, or as required to be provided to governmental and quasi-governmental bodies, agencies, and employees in connection with any entitlement or other processes in which Buyer engages with respect to its inspection of the Property. The parties expressly confirm that this confidentiality provision is an essential and material term of this Agreement that is intended to be enforceable by any remedies available at law or equity, including injunctive relief.

28. **EXCLUSIVE RIGHTS:** Seller and Seller's agents shall refrain from all further marketing efforts for the Property and shall not accept or entertain offers, negotiate, solicit interest, or otherwise enter into discussions involving the sale, recapitalization, restructuring, or disposition of all or any part of the Property, until the termination of this Agreement.
29. **JUDICIAL INTERPRETATION:** Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not construe this Agreement against one party more strictly by reason of the rule of interpretation that a document is to be construed more strictly against the party that prepared the same, it being agreed that the agents of each party have participated in the preparation of this Agreement and that each party thereto consulted with independent legal counsel of its own selection or had the opportunity to consult with such legal counsel prior to the execution of this Agreement.
30. **WAIVER OF CONSEQUENTIAL DAMAGES.** Notwithstanding any provision in this Agreement to the contrary, neither party will be liable to the other party for consequential damages, such as lost profits or interruption of the other party's business, except that this sentence will not apply to Seller's breach of its confidentiality obligations under this Agreement.
31. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER AND BUYER WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN OR AMONG SELLER AND BUYER ARISING OUT OF THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

SELLER:

JGA PROPERTIES INC.

By: _____
Printed: _____
Its: _____

BUYER:

**CITY OF FORT WAYNE, INDIANA,
DEPARTMENT OF REDEVELOPMENT,
acting by and through the FORT WAYNE
REDEVELOPMENT COMMISSION**

By: _____
Printed: _____
Its: _____

DIGEST SHEET

TITLE OF RESOLUTION. A Resolution of the Common Council of the City of Fort Wayne, Indiana, Regarding the Approval of the Expenditure of 2023 Supplemental Local Income Tax Revenues for the Acquisition by the Fort Wayne Redevelopment Commission of Land and Improvements Located at 1234 Wells Street.

DEPARTMENT REQUESTING RESOLUTION. Redevelopment Commission.

SYNOPSIS OF RESOLUTION. The Fort Wayne Redevelopment Commission seeks approval for \$1,490,000 from 2023 Supplemental LIT revenues (funds were reappropriated in early 2024) to acquire the property at 1234 Wells Street. This property, located on the first block of Wells north of the river and adjacent to the former Pepsi property, contains a commercial building currently operated as Don Chavas Mexican Grill. Final approval would also be subject to approval of a similar resolution at the Redevelopment Commission at an upcoming meeting.

EFFECT OF PASSAGE. Passing the resolution will authorize the Redevelopment Commission to acquire a key piece of real estate adjacent to the Pepsi redevelopment site, where developer Browning was recently announced. The property, shown in Exhibit A of the Resolution, is bordered on two sides by parcels already owned by the Redevelopment Commission. Acquiring this property would consolidate these parcels, creating a larger, contiguous site suitable for a significant private-sector project in the future. It would also provide greater flexibility in planning and integrating new public streets and other infrastructure into the development.

EFFECT OF NON-PASSAGE. If the acquisition funds are not approved, the purchase agreement would likely be terminated. Failure to acquire this property would limit the design flexibility of the project, and limit the project's presence on the on the Wells Street Corridor.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). \$1,490,000 from 2023 Supplemental LIT, plus nominal closing costs as described in the Purchase Agreement.

ASSIGNED TO COMMITTEE (PRESIDENT). _____



COMMUNITY DEVELOPMENT REDEVELOPMENT

Sharon Tucker, Mayor

City of Fort Wayne
Community Development
200 E Berry Street, Suite 320
Fort Wayne, IN 46802
260-427-2150 fwcommunitydevelopment.org

December 5, 2024

MEMO

To: City of Fort Wayne Common Council

Copy: City of Fort Wayne Redevelopment Commission

Alec Johnson, Redevelopment Director

From: Jonathan Leist, CD Director, 260-427-1323

Re: Resolution approving funding for the acquisition of 1234 Wells Street

The Fort Wayne Redevelopment Commission hereby requests that the Common Council consider and approve the enclosed resolution authorizing funding in the amount of \$1,490,000 for the acquisition of 1234 Wells Street. As described in the enclosed resolution, digest sheet, and supporting materials, this property is immediately adjacent to the former Pepsi property and surrounded on two sides by parcels owned by Redevelopment.

As announced in June, the Pepsi site will be redeveloped as a mixed-use center of activity referred to as the Treeline District by Browning Real Estate Partners, a developer from Indianapolis. Acquisition of 1234 Wells St will greatly facilitate the Pepsi redevelopment and the project's integration into the existing fabric of Wells Street commercial corridor and allow for additional private investment and development to occur at the site. The property currently contains a commercial structure with an operating restaurant known as Don Chavas Mexican Grill.

A similar approval will also be required at the Redevelopment Commission to finalize the transaction. Closing is contingent upon approval of funding. The purchase price for the property is \$1,490,000, which is a market rate purchase based on the higher of two appraised values acquired by the Commission. The current restaurant owners would be provided with a holdover period of up to 12 months to maintain operations at the site. Funds for this purchase were previously approved in the 2023 Supplemental LIT distribution and were reappropriated by the Common Council in early 2024.

If you have any questions about the proposed acquisition, please contact me at 260-427-1323 or jonathan.leist@cityoffortwayne.org.