

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made this 28 day of June, 2017 ("Effective Date"), and serves as a memorandum of agreement between the **Metropolitan Park District of the Toledo Area**, an Ohio body politic and corporate organized under Chapter 1545 of the Ohio Revised Code ("Metroparks"), and the **Toledo Botanical Garden Board, Inc.**, a charitable scientific and educational corporation organized under Section 501(C)(3) of the Internal Revenue Code of 1986 ("TBG, Inc."), with regard to the operation of a community park known as the Toledo Botanical Gardens.

TBG, Inc. operates a community/horticultural park located at 5403 Elmer Drive, Toledo, Ohio 43605 known as the Toledo Botanical Gardens ("Garden"). The underlying property on which the Garden is located is owned by the City of Toledo. On or about 2006, the City of Toledo, Metroparks, and TBG, Inc. entered into an agreement whereby the Metroparks became partially responsible for the gardens maintenance and operations. TBG, Inc. was primarily responsible for the day to day operations of the Garden.

In order to enhance the Garden's horticultural mission and signature events, including the Crosby Festival of the Arts, while making updates to infrastructure and adding visitor amenities, Metroparks and TBG, Inc., have agreed to shift daily operations of the Garden to the park district.

The parties, with the consent of the City of Toledo, desire to formally modify the previous agreement and enter into a new arrangement whereby Metroparks will be completely responsible for the operation of the Garden and TBG, Inc., will relinquish all responsibility associated with the Garden.

It is the intent of the parties that further negotiations will lead to a Transfer Agreement between them, but these negotiations and this Agreement, do not constitute a binding contract. The parties expressly reserve the right to be bound only by the signing of a written instrument, other than this Agreement, that is to be the final binding agreement between the parties to effectuate the transfer of the Garden operations.

From the effective date of this Agreement through the Termination Date, the parties agree to continue negotiations toward a final definitive agreement for the transfer of the Garden. The termination date for this Agreement shall be July 16, 2017. Based on continued negotiations, the parties desire to enter into a definitive purchase agreement containing the following provisions:

1. **Transfer.** TBG, Inc., agrees to transfer and assign and Metroparks agrees to accept all of TBG, Inc.'s right to occupy and possess the property at 5403 Elmer Drive, Toledo OH on which the Garden is located and as set forth on the drawing attached as Exhibit A, together with all buildings, improvements, fixtures, equipment, easements, privileges, and appurtenances belonging thereto, and all of TBG, Inc.'s right, title, and interest, if any, to occupy the land lying within any street, alley, or roadway adjoining thereto, all of which will hereinafter collectively be called the "Property". TBG, Inc. shall also transfer all inventory and personal

property owned by it which is used in connection with the Garden. TBG, Inc. shall assign its right to all leases, contracts and licenses to which it is a party, or at the request of Metroparks, shall terminate same prior to closing.

2. **Lawful Consideration.** The Metroparks will pay for the assignment of the rights to use such Property the total sum of One and 00/100 (\$1.00) Dollars.

3. **Funding Grant.** As an incentive for Metroparks taking over the Garden obligations and charitable endeavor and to complete deferred maintenance at the Garden, TBG, Inc. agrees to transfer to Metroparks, at closing, the amount of Seven Hundred and 00/100 Thousand (\$700,000.00) Dollars.

4. **Contingencies.** The following conditions will be precedent to Metroparks' obligation to proceed under this Agreement:

- A. **City Approval.** The City of Toledo will approve (and if necessary) will amend Chapter 179 of its Municipal Code facilitate the transfer of operations to the Metroparks and to reflect the changes in operations stated within this Agreement. The parties understand that formal approval of the changes contemplated by this Agreement, including but not limited to, the amending of ordinances, may not occur until after the Metroparks has taken over operation of the Garden.
- B. **Title.** Metroparks' obligations under the definitive agreement will be further conditioned upon the approval by Metroparks, at its absolute discretion, of a commitment for Owners' Title Insurance to be obtained by Metroparks as set forth below.
- C. **Environmental.** Metroparks' obligations under the definitive agreement will be further conditioned upon the TBG, Inc. providing Metroparks with satisfactory evidence, in Metropark's sole discretion, that to the best of TBG, Inc.'s knowledge, the Property is free of any environmental contamination. In addition, Metroparks shall have the right, but not the obligation to conduct its own Phase 1 and Phase 2 investigations of the Property, at its expense.
- D. **Survey.** Metroparks' obligation under the definitive agreement will be further conditioned upon Metroparks obtaining a survey of the Property, at its cost and expense, which survey shall conform to ALTA minimum standards, and which survey shall be approved by the Metroparks in its sole discretion.
- E. **Split Approval.** The Metroparks' obligations under the definitive agreement will be further conditioned upon obtaining proper and necessary approval for the split of the property, if required, as well as the

vacation of any streets, alleys, or easements which may be required for the Metropark to utilize the property.

- F. **Board Approval.** The Metroparks' obligations under the definitive agreement will be further subject to full approval by the Metroparks' Board of Park Commissioners.

5. **Title.** The definitive agreement will provide that TBG, Inc., at Metroparks' sole expense, shall furnish Metroparks with a commitment for title insurance covering the property. The commitment for title insurance shall be issued by a title company of Metroparks' choice, and shall show the title to be good and marketable in the name of the City of Toledo, free and clear from material defects, liens and encumbrances, except: (a) those created or assumed by Metroparks; (b) those specifically set forth in this Agreement; (c) zoning ordinances; (d) legal highways; and (e) restrictions and utility easements of record.

6. **Hazardous Materials.** To the best of the TBG, Inc.'s knowledge, neither it nor any previous owner, tenant or occupant of the property has engaged or permitted any operations upon the property or any portion thereof for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any hazardous materials. To the best of TBG, Inc.'s knowledge, there are no underground improvements, including but not limited to storage and/or septic tanks. If at any time prior to closing, TBG, Inc. receives notice from any governmental authority of the existence of any environmental problem at the property, or if it otherwise becomes aware of the existence of such problem, TBG, Inc. shall promptly give Metroparks a copy of such notice.

7. **Current Obligations.** TBG, Inc. shall provide Metroparks with a complete list of all obligations to which it is a party, including, but not limited to, all leases and licenses for the Garden. TBG, Inc. shall be responsible for payment of all outstanding obligations as of the date of closing, including, but not limited to, employee payroll obligations (including taxes and severance payments, if any), taxes, utilities and amounts owed to vendors. TBG, Inc. shall be entitled to keep all proceeds from the currently scheduled 2017 Crosby Festival of the Arts, 2017 Jazz in the Garden and proceeds, if any, from the retail sale of items at the Garden. The parties acknowledge, however, that Metroparks is under no obligation to operate the retail store at the Garden after it assumes responsibility for the Garden under this Agreement. Rental paid under leases or licenses, if any, shall be the property of the Metroparks.

8. **Right to Inspect.** From the date of this Agreement through closing under the definitive agreement, Metroparks shall have the right to reasonable access to the property to make test borings, hazardous waste investigations and studies, physical inspection of the property, or for any other purpose commensurate with ascertaining the suitability of the property for the intended purpose of the Metroparks.

9. **Closing.** Except as otherwise mutually agreed upon by Metroparks and TBG, Inc., the consummation of the transactions contemplated herein (the "Closing") shall occur no later than July 16, 2017.

10. **Representations and Warranties.** The definitive agreement shall contain representations and warranties satisfactory to Metroparks including but not limited to the following:

- (A) **Legal Capacity.** TBG, Inc. has the legal capacity to enter into this Agreement and to assign its right to occupy the Property, long with personal property in accordance with the terms and conditions hereof and this Agreement is legally binding on and enforceable against TBG, Inc. in accordance with its terms.
- (B) **No Violation.** Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, the partnership agreement of TBG, Inc. or any agreement or instrument to which TBG, Inc. is a party or to which TBG, Inc. or the Property is bound, or will constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree, or order.
- (C) **Construction Lien.** No materials have been delivered nor has any work or labor been performed on the Property under contracts with TBG, Inc. during the last seventy-five (75) days prior to closing which have not been fully paid for and no person or entity presently has any lien, or right of lien, against the Property for labor or material. TBG, Inc. shall indemnify and hold Metroparks harmless for all amounts Metroparks is compelled to pay in discharging or settling any construction lien filed for record against the Property relating to such labor or materials.
- (D) **Compliance with Law.** TBG, Inc. has complied in all material respects with all laws, statutes, ordinances, rules, regulations, and orders of the United States, of the State of Ohio, and of the TBG, Inc. of Lucas, and any agencies thereof with respect to the ownership of the Property and the construction of any buildings, structures, and other improvements situated on the Property and the maintenance and operation of the Property and the machinery, equipment, and systems used in connection therewith.
- (E) **Disputes.** TBG, Inc. has no boundary or water drainage disputes with the owners of adjacent property.

- (F) **Violations.** There are no outstanding violations of any statutes, ordinances, rules or regulations affecting the Property as set forth in any notice from any municipal, TBG, Inc., state, or federal governmental authorities, including, but not limited to, environmental regulatory agencies.
- (G) **Litigation.** There are no actions, suits, or proceedings against the TBG, Inc. with respect to the Property and there are no investigations known to TBG, Inc. which are threatened against TBG, Inc. that would adversely affect the Property or the sale of the Property to Metroparks.
- (H) **No Contracts.** Other than as disclosed to Metroparks in writing, there are no contracts, including, but not limited to, service, repair, management, employment, or maintenance contracts, contract rights, agreements or arrangements, affecting the Property.
- (I) **Encumbrances.** There are no mortgages, judgment liens, security interests arising under the Uniform Commercial Code, tax liens or other encumbrances of any nature whatsoever affecting the Property, except as set forth in the commitment for title insurance to be delivered to Metroparks by TBG, Inc. pursuant to the definitive agreement.
- (J) **Rights to Use.** In connection with the Property, there are no rights of possession, use or otherwise, outstanding in third persons by reasons of unrecorded leases, land contracts, sale contracts, potions, other documents or otherwise, nor are there any unrecorded water, mineral or oil rights, nor are there any unrecorded easements or claims of easement.
- (K) **Condemnation.** There are no condemnation or eminent domain proceedings pending or, to the best of TBG, Inc.'s knowledge, contemplated or threatened, against the Property or any part thereof and TBG, Inc. has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Property or any part thereof, whether temporarily or permanently, for easements, rights of way, or other public or quasi-public purposes, or for any other purpose whatsoever.

11. **Dissolution.** After closing and transfer of the TBG, Inc. rights to the Metroparks, TBG, Inc. shall cease to use the name TBG, Inc., or Toledo Botanical Garden Board, Inc., in connection with the operation of the Garden. TBG, Inc. shall have the right to continue use of the 501(c)(3) non-profit corporation under a D/B/A, in connection with its remaining operations including Toledo Grows. TBG, Inc. shall not have any control over the Garden or the property except as set forth in the definitive agreement.

The parties have signed this Agreement as of the day and date set forth opposite each party's respective name below.

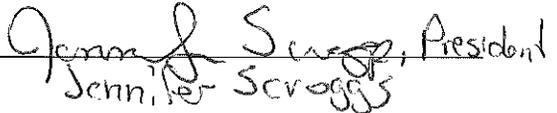
METROPOLITAN PARK DISTRICT
OF THE TOLEDO AREA

Dated: 6/28/2017

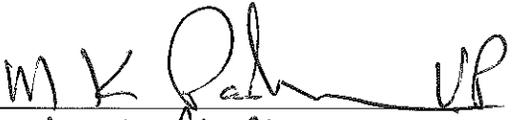
By:  _____

TOLEDO BOTANICAL GARDEN
BOARD, INC.

Dated: 6/28/17

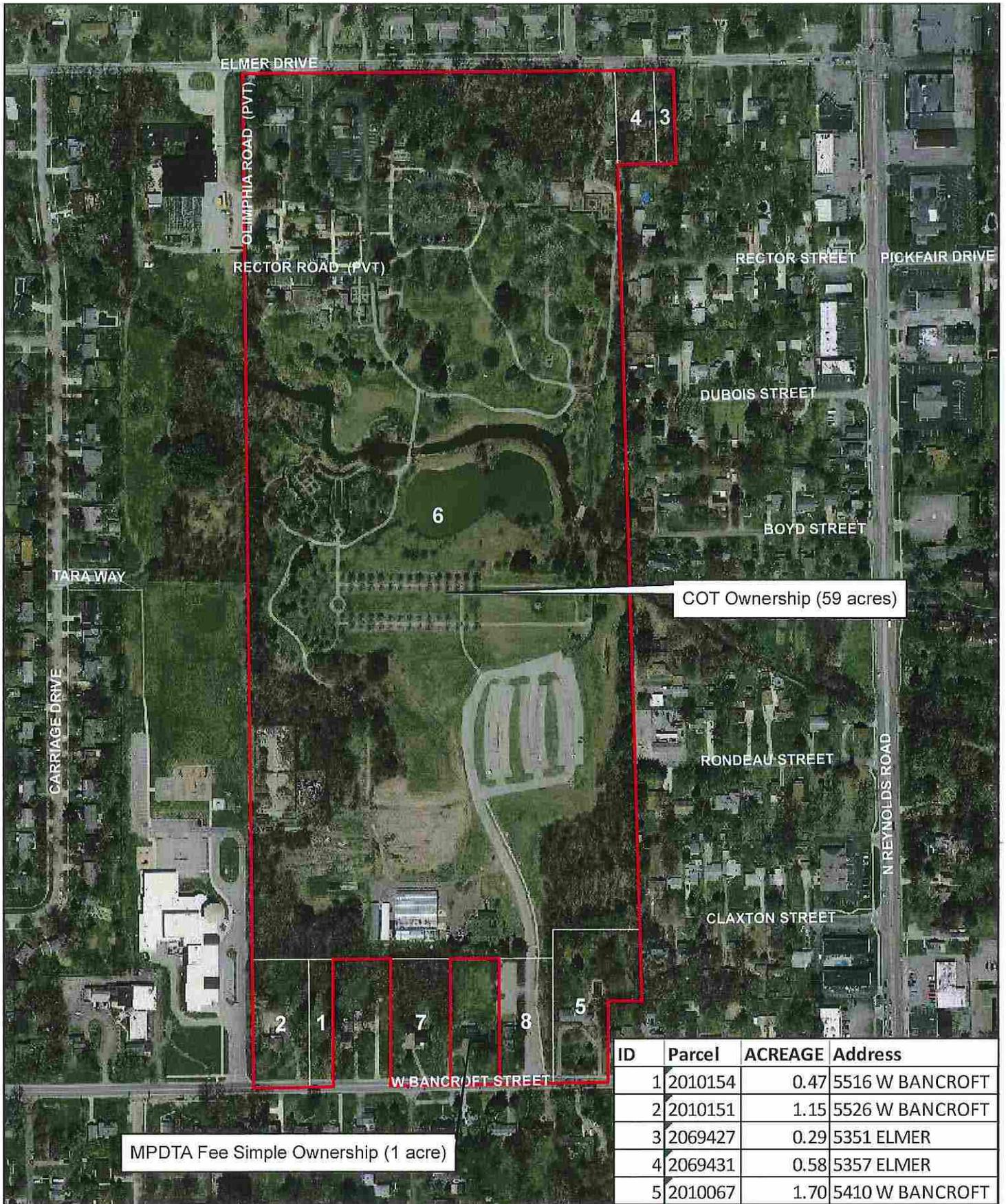
By:  _____
Jennifer Scroggs, President

Dated: 6-28-17

By:  _____
MICHAEL BARKER

358154

TOLEDO BOTANICAL GARDEN - 60 acres



COT Ownership (59 acres)

MPDTA Fee Simple Ownership (1 acre)

ID	Parcel	ACREAGE	Address
1	2010154	0.47	5516 W BANCROFT
2	2010151	1.15	5526 W BANCROFT
3	2069427	0.29	5351 ELMER
4	2069431	0.58	5357 ELMER
5	2010067	1.70	5410 W BANCROFT
6	2010086	52.52	5403 ELMER
7	2010107	1.18	5500 W BANCROFT
8	2010074	1.05	5434 W BANCROFT

