

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2020, ("Effective Date") by and between the **City of Toledo**, an Ohio municipal corporation ("Seller"), One Government Center, Suite 2250, Toledo, Ohio 43604, ("Seller") and **The Board of Education of the Washington Local School District**, located at 3505 W. Lincolnshire Blvd., Toledo, Ohio 43606 ("Purchaser").

WHEREAS, by Ordinance No. _____ passed by Toledo City Council on _____, 2020 and signed by the Mayor on _____, 2020, the Seller was authorized to execute and enter into this Agreement; and.

WHEREAS, by Resolution No. 051 adopted by The Board of Education of the Washington Local School District on September 16, 2020, the Purchaser was authorized to execute and enter into this Agreement.

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

1. PROPERTY. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller, the real property described in Exhibit "A" attached hereto located at 1936 Northover, Toledo, Ohio 43613 ("Real Property").

The Real Property shall be conveyed to Purchaser together with all right, title and interest of Seller in and to the Property as of the date of Closing except utility and public access easements, and those rights reserved by Charter of the City of Toledo. (The Real Property and other rights and property to be conveyed are collectively the "Property").

2. PURCHASE PRICE & DEPOSIT. The Purchase Price for the Property shall be One Dollar (\$1.00) ("Purchase Price"). There shall be no earnest money deposit required of Purchaser.

3. INSPECTIONS.

(a) Commencing on the Effective Date of this Agreement and continuing for a period of 45 days after all required authorizations, votes, procedures, consents, approvals, ordinances, and/or resolutions have been obtained by Seller ("Inspection Period"), Purchaser or its agents may enter the Real Property at all reasonable times, after prior notice to and consent of Seller, which consent shall not be unreasonably withheld, for the purpose of conducting any investigations, surveys, tests and inspections as Purchaser may desire ("Inspections"), including, without limitation, environmental surveys and tests, soil borings, and engineering studies. Purchaser shall defend, indemnify and save harmless Seller from any and all claims, losses, damages, and expenses (including reasonable attorneys' fees), for injury to property or person, arising solely from the entry onto the Real Property by Purchaser, its agents, employees, contractors and representatives. If Purchaser does not close the transaction contemplated by this Agreement, Purchaser agrees at its sole cost, to repair any

physical damage to the Real Property caused by the Inspections and to return or restore the Real Property to substantially the same condition as of the date of this Agreement within a reasonable time after the closing would have occurred under this Agreement, not to exceed thirty (30) days.

(b) In its sole discretion, for or without cause, Purchaser may, prior to the Inspection Period, terminate this Agreement without either party having any liability to the other except as set forth in section 3. In the event the Purchaser terminates this Agreement under this section, Purchaser shall deliver, upon Seller's request, at no cost to the Seller, any copies of any Inspections, and related documents secured by the Purchaser with respect to the Property as set forth in section 3(a) above.

4. TITLE AND SURVEY.

(a) During Inspection Period, Purchaser may at its discretion and at its sole cost obtain a commitment for an ALTA owner's policy of title insurance without standard exceptions ("Title Commitment") issued through a title agency ("Title Agency") and by a title insurance company ("Title Company"), pursuant to which the Title Company shall commit to issue an ALTA owner's policy of title insurance without standard exceptions insuring Purchaser's title to the Property in an amount to be determined solely by Purchaser.

(b) During Inspection Period, Purchaser may at its discretion and at its sole cost obtain a survey of the Real Property prepared by a registered surveyor selected by Purchaser ("Survey"). The legal description prepared from the Survey shall be used in Seller's Deed, provided that the description is approved by all appropriate governmental authorities and by the Title Agency and Title Company. If no survey is obtained by Purchaser, the legal description shall be prepared based upon the Deeds of conveyance to Seller.

(c) If the Commitments or Surveys show that Seller does not have marketable, fee simple title to the Real Property or that there are any defects or matters, including without limitation, liens, easements, restrictions, covenants, encroachments, encumbrances, adverse interests, overlaps, encroachments, gaps, or gores not acceptable to Purchaser in its sole discretion ("Defects"), then Purchaser shall notify Seller of its objection to any such Defects. Upon receipt of Purchaser's objections, Seller shall promptly undertake and complete all actions as are necessary to satisfy or eliminate any such Defects.

(d) Those Defects (a) to which Purchaser did not object or (b) to which Purchaser did object but which Purchaser expressly elects to accept, shall be considered "Permitted Exceptions" for purposes of this Agreement. However, if Seller is unable to satisfy or eliminate any Defects prior to the Closing Date, then Purchaser may either (a) terminate this Agreement, at which time the parties shall be released from all further obligations under this Agreement (except that Purchaser's obligations under Sections 3(a) and (b) shall survive, (b) undertake to eliminate such Defects on Seller's behalf but at Purchaser's sole expense (in which event the Inspection period shall be extended by a period of time equal to the time required to remove the Defect), or (c) waive the objections and accept the Real Property with the Defects, without abatement of the Purchase Price.

5. REPRESENTATIONS, AND COVENANTS.

(a) Seller, to the best of Seller's knowledge, represents to Purchaser as of the date of this Agreement with respect to the Property as follows:

i. The Seller is a governmental entity and body corporate duly organized and existing under Ohio law.

ii. As of the date of this Agreement, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor is any such litigation or proceeding presently threatened, against it or any of its property that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Agreement;

iii. To the best of Seller's knowledge, no consent, approval or authorization of, or declaration, registration or filing with, any governmental or any nongovernmental body, person or entity is required on the part of the Seller in connection with the execution and delivery of this Agreement except passage by Toledo City Council of an authorized ordinance.

(b) Purchaser hereby represents, covenants and warrants:

i. That it is a public school district and political subdivision under the laws of the State of Ohio and has full right and authority to purchase the Property from Seller in accordance with the terms and conditions of this Agreement;

ii. That this Agreement represents a legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms;

iii. That, except as set forth in this Agreement, Seller has made no representations or warranties, including without limitation, any implied warranty or fitness for any use or purpose of the Property, governmental restriction or limitation on the Property or the physical condition of the Property, including latent defects or environmental conditions, and should the Property prove defective in any manner, Purchaser shall assume the entire cost of any and all necessary repairs or remediation.

6. **"AS IS" PURCHASE.** Purchaser will be given the opportunity to access to the Real Property to conduct the Inspections and, in the event Purchaser does not elect to terminate this Agreement as provided in this Agreement and proceeds to Close the transaction, at Closing Purchaser will acknowledge that it has inspected the Property, observed its physical characteristics and existing conditions, and has been afforded the opportunity to conduct such investigations, surveys, tests and inspections as Purchaser may desire on for the purpose of acquiring the Property. Purchaser shall further acknowledge and agree that the Property is to be sold and conveyed to, and purchased and accepted by, Purchaser in its then present condition, "AS IS" and with all faults, and Purchaser assumes the risk that adverse past, present and future physical characteristics and conditions may not have been revealed by its inspection or investigation.

7. **CONDITIONS PRECEDENT.** Each and every obligation of Seller and Purchaser to be performed at the Closing shall be subject to the satisfaction of the following conditions prior to, or concurrently with, the Closing and if such conditions are not satisfied, then unless Seller and Purchaser waive the fulfillment of such condition, in writing, this Agreement shall be null and

void. Each of the conditions precedent, except for 7(d), is for the benefit of Purchaser and may be waived at any time by written notice thereof. The waiver of any particular condition shall not constitute a waiver of any other.

(a) Seller shall have performed and complied with all agreements, covenants and obligations which under this Agreement are required to be performed or complied with by Seller prior to or at the Closing. Each representation and covenant of Seller shall be accurate, complete and true on the Closing Date. There shall be no material error or misstatement in, or omission from, or any breach of, any representation or covenant made by Seller;

(b) There shall be no material adverse change in the environmental condition of the Property, and the physical condition of the Property shall be substantially the same on the Closing Date as on the Effective Date, reasonable wear and tear excepted. No portion of the Real Property shall have become the subject of a proposed environmental cleanup or remediation plan of action prior to Closing or listed or proposed for listing on the NPL list or the ERCDIS list of the U.S. Environment Protection Agency or any similar state or federal listing of sites containing Environmental Hazards;

(c) On the Closing Date, no moratorium or proceeding shall be pending or threatened affecting the availability at regular rates and fees of sewer, water, electric, gas, telephone or other utilities or services servicing the Real Property, and there shall be no pending or threatened environmental, administrative, litigation or other investigation, violation or proceeding which, in Purchaser's sole discretion, adversely affects the value or marketability of the Real Property or Purchaser's ability to operate it for Purchaser's intended use in the manner contemplated by Purchaser; and

(d) Seller shall have obtained all necessary and required consents, approvals and authorizations from its City Council, and any other internal or external council, board, person, entity, committee, City Attorney, other legal or financial advisors, as the case may be, with respect to the authorization and ratification of the execution, delivery and performance of this Agreement, the consummation of the transaction contemplated hereby and all other duties and obligations of Seller hereunder.

8. FIRE AND OTHER CASUALTY. Any improvements ("Improvements") on the Real Property shall be self-insured against loss by fire or other casualty by Seller. Risk of loss from fire or other casualty shall be borne by Seller until Closing. The foregoing notwithstanding, if prior to the Closing Date, all or any part of the Real Property is damaged by fire or natural elements or other causes, which Seller does not repair or agree to repair, or any part of the Real Property is taken pursuant to any power of eminent domain, Seller shall immediately notify Purchaser of such occurrence, and Purchaser may terminate this Agreement with written notice to Seller within fifteen (15) days after the date Purchaser receives said notice, without further liability of either Party under this Agreement, except for those obligations of the parties which are intended to survive termination. If Purchaser does not elect to terminate this Agreement, there shall be no reduction of the purchase price and Seller shall assign to Purchaser Seller's rights and insurance proceeds or eminent domain award at Closing.

9. **CLOSING.** The closing on the purchase of the Property ("Closing") shall occur at the offices of the Title Agency or in Escrow through the services of the Title Agency as the parties may agree on a date mutually agreed upon by the parties ("Closing Date") after the end of the Inspection Period, unless Purchaser elects to waive a portion of the Inspection Period and Close earlier, at its sole option. Purchaser and Seller shall comply with the following at or before the Closing:

(a) Seller shall execute, acknowledge and deliver to Purchaser a transferable and recordable corporate Quit Claim Deed with conveying fee simple title to the Real Property using the proper legal description of the property as described in the Title Commitment, subject only to zoning ordinances, easements and restrictions of record and taxes and assessments due and payable after delivery of this Deed, and Permitted Exceptions acceptable to the Title Agency and Title Company.

(b) Seller shall deliver to Purchaser a bill of sale for the personalty and all other documents reasonably required by Purchaser or the Title Company to complete this transaction.

(c) Purchaser shall deliver to the Title Agency a bank check or wire transfer to the Title Agency in an amount equal to the Purchase Price, adjusted by any credits or prorations as set forth herein.

(d) Seller shall be responsible for any transfer tax and/or conveyance fee. Purchaser shall be responsible for the premiums for the title insurance policies, the cost of the Surveys, recording fees and all of all settlement or closing fee charged by the Title Agency. Each party shall pay all its own expenses and legal fees.

All of the documents to be supplied by Seller shall be satisfactory in form and substance to Purchaser and shall be submitted to Purchaser for review at least seven (7) days prior to the Closing Date.

10. **TERMINATION BY LAPSE OF TIME.** Notwithstanding anything contained in this Agreement to the contrary, this Agreement and the rights of Purchaser hereunder shall terminate in the event Closing has not occurred within twelve (12) months from the Effective Date.

11. **TAXES.** Seller shall pay all taxes and all assessments, if any, either due and payable or levied on or before the Closing Date. Taxes and assessments, if any, to become due and payable in the year of closing, shall be prorated between the parties as of the Closing Date in accordance with local custom.

12. **OTHER CLOSING DOCUMENTS.** At the Closing, Seller shall furnish Purchaser and the Title Company with an owner's affidavit as to construction liens, persons in possession of the Property, and similar matters as reasonably required by the Title Agency or Title Company. At a minimum, said affidavit shall state that there are no construction liens or persons in possession of the Property.

13. **POSSESSION.** Seller shall deliver unencumbered and absolute possession of the Real Property to Purchaser at the time of Closing free of any tenants, leasehold interests or rights of possession of any person or entity.

14. **COMMISSIONS AND BROKERAGE FEES.** Each party represents, covenants and warrants to the other that (a) it has not dealt with, engaged or consulted with any broker, salesperson, consultant or other finder in connection with the purchase and sale of the Property or this transaction; and (b) no person or entity is in any way entitled to compensation as a consequence of this transaction. Seller and Purchaser hold harmless the other from and against any and all claims, loss, liability, cost and expenses (including reasonable attorneys' fees) resulting from any claim that may be made for any commission, fee or other compensation by reason of this transaction if the same shall arise by or on account of any act of the party making such representation, covenant and warranty. The indemnification obligations in this paragraph shall survive the Closing or the earlier termination of this Agreement.

15. **PARTIES BOUND; ASSIGNMENT.** This Agreement shall be binding upon the Purchaser and Seller and their successors and permitted assigns. This Agreement and any rights hereunder may be assigned by Purchaser with the prior written consent of Seller, which consent shall not unreasonably be withheld.

16. **NOTICES.** All notices required or permitted hereunder shall be given in writing addressed to the parties as follows:

If to Seller:

City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604
Attn: Commissioner of Economic Development

With a copy to:

City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604
Attn: Director of Law

If to Purchaser:

The Board of Education of the Washington Local School District
3505 W. Lincolnshire Blvd.
Toledo, Ohio 43606
Attn: Jeffery S. Fouke, Treasurer

Unless otherwise provided herein, any notice shall be given by personal delivery; certified mail, postage prepaid; or by nationally recognized overnight courier and shall be effective on the date it is personally delivered or on the date it is deposited with the postal service or courier, as the case may be. Either party may give the other written notice of change of address pursuant to this section.

17. **SURVIVAL.** The representations, warranties, covenants and agreements of the parties under this Agreement shall survive the termination of this Agreement and Closing.

18. **MISCELLANEOUS.** Time is of the essence. This Agreement shall be governed by the laws of the State of Ohio. No amendments, modifications or variations of the terms and conditions of this Agreement shall be valid unless the same are in writing and signed by both parties hereto. Wherever used in this Agreement, the singular shall be deemed to include the plural, and vice versa, and the use of any gender shall be deemed to include all others.

19. **PRIOR AGREEMENT.** This Agreement represents the entire and sole agreement between the parties pertaining to the sale of the Property and the parties hereby mutually withdraw, cancel, waive, terminate and exclude any and all oral or written representations, discussions or agreements made prior to or contemporaneously with the execution of this Agreement.

20. **COUNTERPARTS; ELECTRONIC TRANSMISSION.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all counterparts, when taken together, will constitute one and the same Agreement.

**CITY OF TOLEDO (Seller), an Ohio
Municipal Corporation**

By: _____
Wade Kapszukiewicz, Mayor

**THE BOARD OF EDUCATION OF THE
WAHSINGTON LOCAL SCHOOL
DISTRICT, (Purchaser)**

By: _____
Jeffery S. Fouke, Treasurer

Date: September 20, 2020

APPROVED AS TO CONTENT:

Department of Economic Development

APPROVED AS TO FORM:

Department of Law

EXHIBIT A

PROPERTY ADDRESS: 1936 Northover Rd. Toledo, OH 43613



PARCEL: 22-03411

LEGAL DESCRIPTION:

7 9 9 NE 1/4 E 660 FT W 1320 FT S 822 F T EXC TRI NE COR BEING 251.1 FT ON N LINE
& 100.2 FT ON E LINE EXC PT IN RD