

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 2021, ("**Effective Date**") by and between the City of Toledo, an Ohio municipal corporation ("**Seller**"), One Government Center, Suite 2250, Toledo, Ohio 43604, and MVAH Holding LLC, a foreign limited liability company with a principal office located at 9100 Centre Pointe Drive, Suite 210, West Chester, OH 45069 ("**Purchaser**").

WHEREAS Ordinance No. _____-21 passed by Toledo City Council on _____, 2021, authorized the Mayor to execute and enter into this Agreement.

WHEREAS, Seller is owner of record of the certain parcel of land located at 1157 Grand Ave. Lucas County, Toledo, Ohio 43606 (Parcel 04-57597) more particularly described in Exhibit "A", attached hereto ("**Property**");

WHEREAS, Purchaser desires to purchase from Seller the Property, and Seller desires to sell and convey the same to Purchaser;

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.** Subject to the terms and conditions set forth herein, Purchaser agrees to buy and Seller agrees to sell and convey all of Seller's right, title and interest in and to the Property described as follows:
 - (a) The Property;
 - (b) All rights, privileges and easements appurtenant to the Property, as agreed to by the parties and not otherwise reserved by the Charter and Municipal Code of the Seller.
 - (c) All improvements, if any, on or within the Property, including all buildings and fixtures, signs and plants (the "**Improvements**").
 - (d) Any personal property owned by Seller remaining on the Property as of the Effective Date.

2. **PURCHASE PRICE & EARNEST MONEY.** The Purchase Price for the Property shall be Three Hundred and Fifty Thousand and 00/100 Dollars (\$350,000.00) ("**Purchase Price**") and shall be paid in cash at Closing, subject to the adjustments required in this Agreement. Seven (7) business days after the Effective Date, Purchaser shall pay to

Midland Title & Escrow, 401 Adams Street, Toledo, Ohio 43604 ("**Escrow Agent**", "**Title Company**", or "**Title Agency**") the sum of Twenty-Five Thousand Dollars (\$25,000) ("**Earnest Money**"), which shall be held in trust as an earnest money deposit pursuant to the terms of the separate Escrow Agreement with the Escrow Agent. All deposits tendered pursuant to this Agreement shall be held and applied in accordance with the terms of this Agreement. Escrow Agent shall deposit all funds in an interest-bearing account with a federally-insured financial institution. All deposits tendered under this Agreement plus interest earned are referred to in this Purchase Agreement as "Earnest Money".

3. **PROJECT.** Purchaser commits to construct a 50-70 unit affordable multi-family housing facility ("**Facility**") with ground floor retail and supporting amenities on the Property within 4 years of the Closing Date.
4. **SELLER'S OPTION TO BUY BACK PROPERTY.** Seller hereby retains a conditional option to repurchase in the Property and all improvements thereon for the amount of \$350,000 in the event that Purchaser does not fulfill its commitment to timely construct the Facility within 4 years of the Closing Date. The consideration and commitments of paragraph 3 shall be deemed to have been satisfied by Purchaser upon the issuance of an occupancy permit by Seller's Division of Building Inspection for the constructed Facility. Issuance of the occupancy permit by Seller's Division of Building Inspection shall not be unreasonably withheld, conditioned or delayed. If an occupancy permit for the Facility has not been issued by the fourth anniversary of the Closing Date, Seller may exercise its option at any time thereafter. Purchaser and Seller agree to execute an option agreement ("**Option Agreement**") for this purpose at closing, which Option Agreement shall be recorded in the Lucas County records. Upon the issuance of the above referenced occupancy permit, the Seller shall record a release and termination of the Option Agreement. This provision shall be binding on Purchaser, and its assigns or successors in interest or subsequent purchasers; and the obligations hereunder shall survive the Closing.
5. **DUE DILIGENCE PERIOD.** Purchaser shall have until June 10, 2022 ("**Due Diligence Period**"), to go upon the Property with its agents and engineers as needed to inspect, examine, survey and otherwise do what Purchaser deems necessary to determine the suitability of the Property for the Purchaser's intended use. Said privileges shall include, but not be limited to, the right to make surveys, soil tests, borings, percolation tests, environmental and hazardous waste tests and to obtain other information necessary to determine surface, subsurface and topographic conditions; provided; however, that Purchaser shall hold Seller harmless from any damages incurred by Seller and/or damages or injury or claim thereof, including attorney's fees arising out of, or in any way connected with the acts or omissions of Purchaser, its agents and engineers through the exercise of such privilege. Immediately following such surveys and inspections and at its expense, Purchaser shall put the Property back in the condition that existed prior to such surveys and tests, or as close as reasonably possible. Should Purchaser, in its sole discretion, determine that the Property is not acceptable, Purchaser shall have the right to (i) deliver written notice of such to Seller or Seller's agent prior to the expiration of the Due Diligence

Period or any extensions thereof pursuant to Section 5.1 below or otherwise and all Earnest Money shall be promptly refunded to Purchaser and neither Purchaser nor Seller shall have any further obligation to the other, or (ii) waive the requirements and/or contingencies regarding such due diligence review and proceed with this Agreement. Earnest Money shall become non-refundable at the end of the Due Diligence Period, as extended. The Earnest Money will be credited against the Purchase Price at Closing. Purchaser shall, within fifteen (15) days of delivery of termination notice, deliver to Seller copies of all surveys, inspection reports and studies completed during the Due Diligence Period.

5.1 Due Diligence Period Extension Option. Purchaser shall have the right to extend the Due Diligence Period for up to three additional periods of Ninety (90) days each. Extension is exercised upon advance written notice to Seller prior to the expiration of the Due Diligence Period or extension thereof (if applicable) and payment of \$25,000 Extension Fee each to Escrow Agent which shall be credited against the Purchase Price. In the event of termination (except in the case of Seller default) after the initial Due Diligence Period, Twelve Thousand Five Hundred Dollars (\$12,500) will be refunded to Seller if written notice of termination is delivered the Seller prior to the end of the first extension, Thirty-Seven Thousand Five Hundred Dollars (\$37,500) will be refunded to the Seller if written notice of termination is delivered to the Seller prior to the end of the second extension, and One Hundred Thousand Dollars (\$100,000) will be refunded to the Seller if written notice of termination is delivered to the Seller after the beginning of the third extension.

Notwithstanding, in the event within 18 months of the Effective Date Purchaser has applied for and fails to secure financing via low income housing tax credits or tax-exempt bond financing in an amount sufficient to complete the Project this Agreement shall terminate and all Earnest Money on deposit will be returned to Purchaser.

6. **OHIO ENVIRONMENTAL PROTECTION AGENCY VOLUNTARY ACTION PLAN.** Purchaser and Seller agree to collectively pursue a Covenant Not to Sue through the Ohio Environmental Protection Agency's Voluntary Action Plan for the implementation of remedial activities and/or the installation and implementation of an engineering control under future buildings necessary to support construction and maintenance of the Facility on the Property.

7. **PARTIES REPRESENTATIONS AND COVENANTS.** To the best of Seller's knowledge, Seller hereby makes the following representations:

7.1 Authority of Seller. Seller has the right, power and authority to enter into this Agreement and to sell the Property in accordance with the terms and conditions hereof. This Agreement, when executed and delivered by Seller, will be a valid and binding obligation of Seller in accordance with its terms.

- 7.2 No Special Taxes. The Property is not subject to special taxes or assessments for roadway, sewer or water improvements or other public improvements not otherwise disclosed on the tax duplicate.
- 7.3 Options; Leases. No options or other contracts have been granted or entered into which are still outstanding and which give any other party a right to purchase any interest in the Property or any part thereof. There are no leases of any type relevant to the Property or parties with tenancy or possessory rights. Further, there are no utility, security, service or maintenance agreements relevant to the Property which Purchaser must assume. Purchaser assumes no such agreements.
- 7.4 Condemnation Proceedings. There are no condemnation or eminent domain proceedings or orders pending against the Property or any part thereof, and the Seller 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.
- 7.5 Mechanic's Liens. No payments for work, materials, or improvements furnished to the Property will be due or owing at Closing and no mechanic's lien, materialman's lien, or other similar lien shall be of record against the Property.
- 7.6 Pending Litigation. There is no claim, litigation, or other proceeding, the probable outcome of which will have a material adverse effect on the value of the Property or its intended use pending or threatened before any court, commission, or other body or authority, and, further, Seller has not received written notification of any asserted failure of Seller or the Property to comply with any applicable laws or any rule, regulation, order, ordinance, judgment or decree of any federal, state, municipal or other governmental authority.
- 7.7 Flood Conditions. The Property has not suffered any damage nor required any extraordinary repairs due to flooding or inadequate drainage.
- 7.8 Further Acts of Seller. On or before the Closing, Seller will do, make, execute and deliver all such additional and further acts, deeds, instruments and documents as may be reasonably required by Purchaser's title insurance company completely to vest in and assure to Purchaser full rights in or to the Property.
- 7.9 Compliance with Laws. The Property is in good standing and in compliance with all applicable covenants, conditions, restrictions, easements, laws, regulations, rules affecting the Property and for which the Property is subject. Neither Seller nor the Property has received any notice of and there exist no known proceedings or investigations by any governmental authority against or affecting the Property. The continued compliance with all legal requirements relating to the Property is not dependent on facilities located at any other property; and compliance by any other property with any legal requirements applicable to the other property is not dependent

on the Property, except ordinary water, sewer and storm water utilities.

- 7.10 Environmental. (i) Seller has not used the Property for the storage, treatment, generation, production or disposal of any toxic or hazardous waste, material or substance nor does Seller have knowledge of such use by others; (ii) Seller has not caused or permitted and has no knowledge of the release of any toxic or hazardous waste, material or substance on or off site of the Property; (iii) Phase I Assessment identified potentially hazardous materials that were removed and disposed by a licensed contractor; and (iv) underground storage tanks placed by previous owners were located, removed, and disposed in accordance with Ohio Bureau of Underground Storage Tank Regulations as well as associated soil and solidified material were also properly disposed.
- 7.11 Zoning. The Property is zoned CR – Regional . Seller is currently requesting to have the Property rezoned to CM – Commercial—Residential Mixed zoning to better reflect the Purchasers intended use.

Purchaser hereby represents, covenants and warrants:

- 7.12 That it is in good standing 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;
- 7.13 That this Agreement represents a legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms;
- 7.14 That, except as set forth in this Agreement, Seller has made no 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, which does not involve a Seller breach of a representation as provided in Section 4, Purchaser shall assume the entire cost of any and all necessary repairs or remediation.

The representations and warranties, covenants and other agreements of the Seller and Purchaser contained in this Agreement shall survive the Closing, the execution and delivery of the deed.

- 8 "AS IS" PURCHASE. Except as elsewhere represented and warranted by Seller in this Agreement, Purchaser acknowledges and agrees by executing Agreement 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.

- 9 **RISK OF LOSS.** Risk of loss to the Property shall be borne by Seller until Closing. The foregoing notwithstanding, if prior to the Closing Date, all or any part of the 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 Property is taken pursuant to any power of eminent domain, Seller shall immediately notify Purchaser of such occurrence, and Purchaser may terminate Agreement with written notice to Seller fifteen (15) days after the date Purchaser receives said notice, without further liability of either Party under Agreement, except for those obligations of the parties which are intended to survive termination. If Purchaser does not elect to terminate 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.
- 10 **PURCHASER'S DEFAULT.** As a material inducement to Purchaser's execution hereof, Purchaser and Seller agree that it would be impracticable and extremely difficult to fix actual damages in case of Purchaser's default prior to closing. Seller agrees that the amount of the Earnest Money and any Extension Fee paid prior to default and closing is a reasonable estimate of such damages, and that Seller shall retain the Earnest Money and any paid Extension Fee as liquidated damages, and its sole remedy against Purchaser. Seller agrees that the amount of the Earnest Money and any paid Extension Fee is a sufficient remedy for such Purchaser default, Seller shall no longer have any cause of action or claim against Purchaser in law or in equity, including specific performance, and Purchaser shall be fully released from any action of Seller arising out of Purchaser's alleged breach of this Agreement.
- 11 **CLOSING.** The sale and conveyance of the Property ("**Closing**") shall occur at the offices of the Title Agency on a date mutually agreed upon by the parties ("**Closing Date**") no later than thirty (30) days from the end of the Due Diligence Period as extended and described above.
- 12 **TITLE, PRORATION, AND CLOSING COSTS.** Seller shall convey the Property to Purchaser by a properly executed quit claim deed conveying insurable title free and clear of all liens and encumbrances subject, however, to taxes and assessments due and payable after the Closing Date, zoning ordinances, legal highways and easements and restrictions of record disclosed to Purchaser in a title commitment and approved in writing by Purchaser. Purchaser shall pay all title and incidental costs of Closing this transaction, including Purchaser's attorney fees, any real estate transfer tax, and any real estate taxes or assessments prior to Closing.
- 13 **Intentionally Omitted.**
- 14 **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.

- 15 POSSESSION.** Seller shall deliver unencumbered and absolute possession of the Property to Purchaser at the time of Closing free of any tenants, leasehold interests or rights of possession of any person or entity.
- 16 COMMISSIONS AND BROKERAGE FEES.** Each party represents and covenants 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.
- 17 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 or delayed.
- 18 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: Director, Department 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:

MVAH Holding LLC
9100 Centre Pointe Drive, Suite 210
West Chester, Ohio 45069
Attn: Brian McGeady

With a copy to:

Midland Title & Escrow
401 Adams Street
Toledo, Ohio 43604

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 delivered by 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.

- 19 SURVIVAL.** The representations, warranties, covenants and agreements of the parties under this Agreement shall survive the termination of this Agreement and Closing.
- 20 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.
- 21 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.
- 22 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.

{SPACE INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS}

Seller:
City of Toledo, an Ohio,
an Ohio municipal corporation

Wade Kapszukiewicz Date
Mayor

Purchaser:
MVAH Holding LLC

 11/30/2021

Brian McGeady, Authorized Signer Date

Approved As To Form:

Department of Law

Approved As To Content:

Department of Economic Development

Department of Neighborhoods

EXHIBIT A

(Legal Description of Real Property)

PARCEL 1:

Being a strip of land sixty (60) feet in width in Section thirty-four (34), Town nine (9) South, Range seven (7) East lying North of Woodruff Avenue, and West of Hoag Street as they are dedicated in the Plat of Englewood recorded in Volume 6, page 15, Lucas County Plat Records.

Beginning at the intersection of the North line of Woodruff Avenue (eighty (80) feet wide), with the original West line of Hoag Street (now vacated);

thence West along the North line of Woodruff Avenue, a distance of sixty and zero hundredths (60.00) feet to the Southeast corner of Lot Number three hundred fifty (350) in the Plat of Englewood;

thence North along the East line of said Lot number three hundred fifty (350), a distance of ninety-six and five hundredths (96.05) feet measured (ninety-eight and no tenths (98.0) feet record) to the Southwesterly line of Detroit Avenue (eighty (80) feet wide);

thence Northeasterly along the Southeasterly line of Detroit Avenue, a distance of one hundred forty-seven and thirty-five hundredths (147.35) feet to the original West line of Hoag Street;

thence South along the original West line of Hoag Street, a distance of two hundred twenty-seven and seventy-five hundredths (227.75) feet, more or less, to the North line of Woodruff Avenue and the point of beginning.

PARCEL 2:

The West one-half (1/2) of Hoag Street vacated by Ordinance 33-72 on January 18, 1972 that lies between the North line of Woodruff Avenue and the Southeasterly line of Detroit Avenue as recorded in the Plat of Englewood which is recorded in Volume 6, page 15, Lucas County Plat Records.

PARCEL 3:

Lot Number three hundred fifty (350) in Englewood, a Subdivision in the City of Toledo, Lucas County, Ohio,

PARCEL 4:

A parcel of land in Forest Place Addition, in Englewood, City of Toledo, Lucas County, Ohio, consisting of Lots numbers twenty-two (22) through twenty-eight (28) inclusive, excepting therefrom the Easterly forty-seven and fifty hundredths (47.50) feet, together with the Northerly one-half (1/2) of previously vacated South London Square, adjacent to the above described land, and together with the Easterly one-half (1/2) of vacated West London Square between the center line of vacated South London Square and the Southerly right of way line of Grand Avenue.

PARCEL 5:

A parcel of land in Englewood Addition to the City of Toledo, Lucas County, Ohio, consisting of the North seventy (70) feet of Lots numbers fifty-seven (57) and fifty-eight (58), together with the South one-half (1/2) ten (10) feet of vacated South London Square lying adjacent to the above described lots, and also together with the Easterly one-half (1/2) (thirty (30) feet of vacated Hoag Street lying Southerly of the centerline of South London Square, and adjacent to the above described land.

PARCEL 6:

The North sixty (60) feet of the South ninety (90) feet of Lot Number fifty-six (56) in Englewood, a Subdivision in the City of Toledo, Lucas County, Ohio, together with the Easterly one-half (1/2) (thirty (30) feet) of vacated Hoag Street lying Westerly of and adjoining said premises.

PARCEL 7:

Lots numbers fifty-four (54), fifty-five (55), and fifty-six (56), except the North sixty (60) feet of the South ninety (90) feet of said Lot Number fifty-six (56) and the North sixty (60) feet of Lots numbers fifty-nine (59), sixty (60) and sixty-one (61) in Englewood, a Subdivision in the City of Toledo, Lucas County, Ohio, together with the East one-half (1/2) (thirty (30) feet) of vacated Hoag Street lying Northerly of the centerline of South London Square and Westerly of and adjoining that part of said Lot number fifty-six (56), also together with the North one-half (1/2) (ten (10) feet) vacated South London Square lying South of and adjoining said Lot Number fifty-six (56), also together with all of vacated South London Square adjoining said Lots numbers fifty-four (54), fifty-five (55), fifty-nine (59), sixty (60), and also together with that part of the South one-half (1/2) of vacated South London Square lying North of and adjacent to Lot number sixty-one (61) that is West of a line that is two (2) feet West of and parallel to the West line of Lot sixty-two (62) in Englewood extended Northerly; and also together with the Westerly one-half (1/2) of vacated London Square lying Easterly of and adjoining said Lot number fifty-four (54),

PARCEL 8:

The West thirty-two and seven tenths (32.7) feet of the South one hundred thirty (130) feet of Lot number fifty-seven (57) in Englewood, a Subdivision in the City of Toledo, Lucas County, Ohio, together with the East one-half (1/2) (thirty (30) feet) of vacated Hoag Street lying Westerly of and adjoining said premises.