

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 2022, ("**Effective Date**") by and between the City of Toledo, an Ohio municipal corporation ("**Seller**"), One Government Center, Suite 2250, Toledo, Ohio 43604, and The Toledo Zoological Society, an Ohio non-profit, with a principal office located at 2605 Broadway Street, Toledo, Ohio 43609 ("**Purchaser**").

WHEREAS by Ordinance No. ____-22 passed by Toledo City Council on _____, 2022 authorized the Mayor to execute and enter into this Agreement.

WHEREAS, Seller is owner of record of the certain parcel of land located at 866 Bartley Pl, Lucas County, Toledo, Ohio 43609 (Parcel 02-06461) more particularly described in Exhibit "A", attached hereto ("**Land**");

WHEREAS, Purchaser desires to purchase from Seller the Land, 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:

I. **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 ("**Property**"):

- (a) The Land;
- (b) All rights, privileges and easements appurtenant to the Land, 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 Land, including all buildings and fixtures, signs and plants (the "Improvements").
- (d) Any personal property remaining on the Land as of the Effective Date.

2. **PURCHASE PRICE**. The Purchase Price for the Property shall be One Dollar (\$1.00) ("**Purchase Price**") and shall be paid in cash at Closing, subject to the adjustments required in this Agreement.

3. **CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS**. The following shall be conditions precedent to the Purchaser's obligation to purchase the Property.

- 3.1 **Status of Title**. Seller shall convey insurable marketable title to the Property to

Purchaser subject only to encumbrances and title exceptions which are acceptable to Purchaser. Purchaser shall have thirty (30) days ("**Title Review**") for the review of the title commitment and its underlying documents and a survey, and submit to Seller notice in writing of any title exceptions which are not acceptable to Purchaser. Seller shall have thirty (30) days from the receipt of notice within which to take such actions, if any, which Seller deems appropriate to remove such title exceptions. Purchaser's failure to deliver title comments shall be deemed to establish Purchaser's satisfaction with the status of title as of the Effective Date except for liens or other encumbrances which are to be satisfied under other provisions of this Agreement. If, at the end of Seller's cure period, Seller has not corrected to Purchaser's satisfaction the objections to title, Purchaser may (1) waive its objections and consummate the within transaction without a reduction in the Purchase Price of the Property, or (2) terminate this Agreement, in which event this Purchase Agreement shall be void and neither party shall have any further obligation hereunder.

3.2 Investigation Period. Purchaser shall have sixty (60) days after the Effective Date ("**Investigation 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 and 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, at its sole discretion, determine that the result of such inspection and studies of the Property are not favorable and delivers written notice of such to Seller or Seller's agent during the Investigation Period, neither Purchaser nor Seller shall have any further obligation to the other. Purchaser shall, within fifteen (15) days of delivery of notice, further deliver to Seller copies of all inspection reports and studies.

4. **PARTIES REPRESENTATIONS AND COVENANTS.** To the best of Seller's knowledge, Seller hereby makes the following representations, each of which is material and is relied upon by Purchaser:

4.1 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.

4.2 No Special Taxes. The Property is not subject to special taxes or assessments for roadway, sewer or water improvements or other public improvements.

4.3 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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

Purchaser hereby represents, covenants and warrants:

i. 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;

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 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, from and after Closing, 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.

5. "AS IS" PURCHASE. 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.

6. 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.

7. **CLOSING.** The sale and conveyance of the Property ("**Closing**") shall within 10 days after expiration of the Investigation Period, unless Purchaser elects to waive a portion of the Investigation Period and Closing occurs earlier.

8. **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 Permitted Title Exceptions, including but not limited to taxes and assessments due and payable after the of Closing Date, zoning ordinances, legal highways and easements and restrictions of record. 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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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:

The Toledo Zoological Society
Jeff Sailer, CEO/Executive Director
2605 Broadway Street
Toledo, Ohio 43609

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.

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

16. **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.

17. **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.

18. **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.

EXHIBIT A

(Legal Description of Real Property)
REAL PROPERTY:

Parcel I:

Lot numbers 63, 64, 65, 66, 67, 68 and Block "A" and Block "B" in Bartley's Broadway Addition, in the City of Toledo, Lucas County, Ohio, in accordance with the plat thereto recorded in Volume 14 of Plats, page 24.

Parcel II:

All that part of Subdivision Number Two (2) of Lot Number Fourteen (14) in River Tract Number Ten (10) In the United States Reserve of Twelve (12) miles square at the foot of the Rapids of the Miami of Lake Erie in the City of Toledo, in said County of Lucas, which lies North of the Toledo, Wabash, and Western Railroad Company's right of way, saving and excepting the following described parcels of land, to wit:

First: That part thereof bounded as follows: Commencing at the intersection of the North line of the right of way of the Wabash Railway with the Westerly line of said Subdivision Number Two (2) of Lot Number Fourteen (14) aforesaid; thence Northerly along said Westerly line Eighty-seven and Five Tenths (87.5) feet; thence diagonally Eastward One Hundred Seventy-Five and Eight Tenths (175.8) feet to the north line of the right of way of the Wabash Railway; and thence Southwesterly along said North line of the Wabash right of way to the place of beginning, and containing One Hundred Seventy-One Thousandths (.171) of an acre; being the same premises heretofore appropriated by the Toledo, Canada Southern and Detroit Railway Company, as shown in Volume 12, Pages 23-29 of the Real Estate Records of the Probate Court of Lucas County, Ohio.

Second: Also saving and excepting that part thereof bounded as follows, to wit: On the north and northwest by the southwest line of the Wabash and Erie Canal; on the east by the east line of said subdivision number Two (2); on the south and southeast by a line parallel with and Four Hundred (400) feet South from the North and Northwest boundary aforesaid; on the West by the West line of said Subdivision Number Two (2); the said parcel of land being a parallelogram in shape and containing Two and One-Third (2 1/3) acres; being the same premises heretofore appropriated by The Toledo, Delphos, and Burlington Railroad Company as shown in Volume 12, pages 413-417 of the Real Estate records of the Probate Court of Lucas County, Ohio; Also excepting a parcel conveyed by The Toledo Wheelbarrow Company to Wabash Railway Company, by deed dated September 14, 1938, received for record September 17, 1938 at 11:10 AM and recorded in Volume 970 of Deeds, page 490, said property being described as follows:

Beginning at a point in the Northerly right-of-way line of Wabash Railway Company, measured Thirty Six and Eight Tenths (36.8) feet Southwesterly along said right-of-way line from the intersection of said railroad line with the West line of Lot Number Sixty-Eight (68), Bartley's Broadway Addition to the City of Toledo, Lucas County, Ohio; thence Southwesterly along said right-of-way line Thirty-One (31) feet; thence Northwesterly on a line making an angle of Twenty-Eight (28) degrees, Forty-Seven (47) minutes with the last described course extended, Southwesterly Twenty-Eight (28) feet; thence Eastwardly in a straight line Fifty-Seven and Sixteen Hundredths (57.16) feet to the point of beginning; containing an area of Two Hundred Ten (210) square feet; and except Parcel condemned by City of Toledo in Cause No. 149459 Court of Common Pleas, Lucas County, Ohio, viz:

Being a strip of land off the Southerly end of Lot "A" of Bartley's Broadway Addition to the City of Toledo, and Subdivision Number Two (2) of Lot Number Fourteen (14) of River Tract Ten (10) in the United States Reserve of Twelve (12) miles square at the foot of the Rapids of the Miami of Lake Erie in the City of Toledo, Lucas County, Ohio, and more fully described as follows: Beginning at the Southeast corner of Lot "A" of Bartley's Broadway Addition aforesaid and being in the Northerly line of the right-of-way of the Wabash Railroad Company; thence South Seventy-Five (75) degrees, Eighteen (18) minutes, Thirty (30) seconds West, with the Northerly line of said Railroad and the Southerly line of Lot "A" aforesaid, Sixty-Four (64) feet, more or less, to a point in the property line between the Toledo Wheelbarrow Company and The New York Central Railroad Company; thence Northwesterly with said property line, Twenty-Five (25) feet to a point; thence diagonally Southeasterly across the property of the Toledo Wheelbarrow Company, Eighty-Seven (87) feet, more or less, to the place of beginning, and containing One Tenth (0.1) acres, more or less.

Seller:

City of Toledo, an Ohio municipal corporation

Purchaser:

The Toledo Zoological Society, an Ohio non-profit

Wade Kapszukiewicz Date
Mayor

By  _____ Date 2 Mar 2022
Jeff Sailer, President and CEO

Approved As To Form:

Approved As To Content:

Department of Law

Department of Economic Developmen