

AGREEMENT TO PURCHASE

THIS AGREEMENT TO PURCHASE ("Agreement") is entered into and is effective as of this ____ day of May, 2019 ("Effective Date") by and between PETER S. ROSS AND MATTHEW D. ROSS, TRUSTEES OF THE ROSS FAMILY REVOCABLE LIVING TRUST U/A/D MAY 22, 2006 (collectively known herein as "Seller"), with an address of PO Box 23, Loveland Ohio 45140, and the CITY OF LOVELAND, an Ohio municipal corporation ("Purchaser"), with an address of 120 West Loveland Avenue, Loveland, Ohio 45140, Attn: Dave Kennedy, with a copy to Joseph J. Braun, Strauss Troy Co., LPA, 150 E. 4th Street, Suite 400, Cincinnati, Ohio 45202.

RECITALS:

A. Seller owns certain real property commonly known as Clermont County, Ohio Parcel Identification Numbers 200602.022, 200602.021A, 200602.020B, 200602.020A, 200602.019B, 200602.029E, 200602.029F, 200602.029D, 200602.029C, 200602.020C, and 200602.021B (collectively known herein as "Property") which are more particularly described on Exhibit A attached hereto and incorporated herein.

B. Seller desires to sell the Property to Purchaser and Purchaser desires to purchase the Property from Seller.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and in consideration of the mutual promises, covenants and agreements contained in this Agreement, the parties hereto agree as follows:

1. Sale. Subject to the terms hereof, Seller agrees to sell the Property to Purchaser and Purchaser agrees to purchase the Property from Seller in its **AS IS/WHERE IS CONDITION**. Any appliances or furnishings remaining in the Property after the Closing shall be included in the sale.

2. Purchase Price and Payment. The purchase price for the Property ("Purchase Price") shall be Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00), payable to Seller as follows:

i. Five Thousand and 00/100 Dollars (\$5,000.00) ("Deposit") shall be deposited by Purchaser with Riverview Title Agency, Inc. ("Title Company") within five (5) business days after the Effective Date to be held as earnest money, and subject, to the provisions of this Agreement, is to be applied to the Purchase Price due on the Closing Date (as defined below); and

ii. The remainder of the Purchase Price shall be payable by wire upon the Closing Date (defined below).

3. Closing Date. The closing ("Closing") of Seller's transfer and sale of the Property to the Purchaser shall occur on or before the later date of: (i) fifteen (15) days after the Inspection Period (defined below) expires; or (ii) fifteen (15) days after all of the tenants or occupants who currently reside in the Property vacate the Property (which vacation will be no later than September 1, 2019), ("Closing Date"). Closing shall be held at a reasonable place and time mutually agreeable to both Seller and Purchaser and shall be facilitated by the Title Company.

4. Conveyance. Seller shall execute, acknowledge, and deliver to Purchaser, at Closing, a fiduciary deed conveying fee simple title to the Property, free and clear of all liens, encumbrances, and other defects in title, including a release of dower, if any, and any and all other documents required by the Title Company to carry out the Closing, including a memorandum of trust that is satisfactory to the Title Company. Prior to Closing, Purchaser may elect, at Purchaser's sole cost and expense, to obtain a title insurance commitment ("Commitment") which will commit to insure title to Property in accordance with the previous sentence. If such Commitment discloses any title defects or other matter which, in Purchaser's sole judgment, interferes with Purchaser's intended use of the Property, or which renders the title unmarketable, then, prior to Closing, Purchaser shall provide written notice thereof to Seller. In such event, if Seller is unable to or does not elect to remedy any such title defects or other such matter of title at Seller's sole cost and expense on or prior to the Closing Date, Seller shall so notify Purchaser and Purchaser shall have ten (10) business days within which to either elect to purchase the Property subject to the title defect or to terminate this Agreement without further liability to either party. If the Agreement is terminated pursuant to this Section 4, the Deposit shall be returned to Purchaser, this Agreement shall terminate, and neither party shall have any further rights or liabilities pursuant to this Agreement, except for those rights or liabilities which are expressly stated to survive the termination of this Agreement. During the term of this Agreement, Seller shall not convey any interest in the Property without the prior written approval of Purchaser.

5. Inspection. Commencing on the Effective Date, Seller shall make the Property available for inspection by Purchaser, its agents and/or employees, subject to the rights of any tenant, for a period of ninety (90) days ("Inspection Period"), and Purchaser may undertake at Purchaser's sole expense, a complete physical and environmental inspection and investigation of the Property, including, but not limited to, the improvements located thereon, the zoning status and other governmental restrictions and requirements and all other circumstances surrounding or affecting the Property as Purchaser deems appropriate (in its sole and absolute discretion) in order to determine that the Property is suitable for Purchaser's intended use. Purchaser agrees to restore the Property to its original condition upon completion of any such inspections. Purchaser shall have the right to terminate this Agreement for any reason or no reason on or before the last date of the Inspection Period by providing written notice to Seller of its desire to terminate the Agreement. If the Agreement is terminated pursuant to this Section 5, the Deposit shall be returned to Purchaser, this Agreement shall terminate, and neither party shall have any further rights or liabilities pursuant to this Agreement, except for those rights or liabilities which are expressly stated to survive the termination of this Agreement. Notwithstanding anything in this Section 5 to the contrary, Purchaser shall be permitted to extend the initial Inspection Period for one (1) additional period of thirty (30) days ("Extension Period") by notifying Seller of the same in writing prior to the expiration of the initial Inspection Period. The term "Inspection Period" as used hereinafter shall include the initial ninety (90) day Inspection Period and the Extension Period if exercised by Purchaser. Purchaser may waive its rights described in this Section 5 in writing by delivering the same to Seller prior to the expiration of the Inspection Period.

6. Delivery of Seller Records. Within three (3) business days after the Effective Date, Seller shall provide to Purchaser copies of any survey in Seller's possession affecting the Property or the use of the Property. If Seller does not deliver such survey to Purchaser, the Inspection Period shall be extended on a day for day basis for each day thereafter that Seller is late in delivering the

survey to Purchaser.

7. Representations and Warranties.

A. Seller’s Representations and Warranties. Seller represents and warrants to Purchaser that:

(i) the Seller is only delivering a survey pursuant to Section 6 hereof because Seller does not have any other records related to the Property in its possession or reasonable control, including but not limited to any environmental studies, title examinations, etc.;

(ii) the Property shall not be occupied by a tenant or occupant at Closing, and any personal property remaining in the Property after Closing shall belong to and be the responsibility of the Purchaser;

(iii) the only tenant or occupant of the Property is Peter S. Ross, individually;

(iv) other than this Agreement, there are no outstanding agreements (except for the current residential leases affecting the Property) entitling any person to acquire or lease any or all of the Property;

(v) it has rejected all other offers to purchase the Property from all other parties;

(vi) that there are no pending or threatened lawsuits or claims against Seller of the Property, including any materialman’s liens;

(vii) there are no management contracts, service contracts or other agreements, including leases, either oral or written, pertaining to the Property that will survive the Closing or to which Purchaser or the Property will be bound;

(viii) Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1990, as amended;

(ix) From the date of this Agreement, and until Closing, Seller shall continue to operate the Property in accordance with its present standards and shall maintain the Property in its current condition and repair, ordinary wear and tear excepted; and

(x) the foregoing representations and warranties of Seller made in subsections (A)(i)-(vi) of this Section 7 shall be true and accurate as of the Closing Date.

B. Purchaser’s Representations and Warranties. Purchaser represents and warrants to the Seller that:

(i) Purchaser has full legal power and authority to purchase the Property as provided for herein, to carry out Purchaser's obligations contained in this Agreement, and the person executing this Agreement on behalf of Purchaser is fully authorized to act on behalf of Purchaser;

(ii) There are no actions, lawsuits or proceedings of any kind, against Purchaser that would in any way prevent or hinder the sale and transfer of the Property contemplated herein.

(iii) The foregoing representations and warranties of Purchaser made in subsections (B)(i)-(ii) of this Section 7 shall be true and accurate as of the Closing Date.

This Section 7 shall survive the Closing.

8. Closing Costs and Fees. Seller shall be responsible for all fees related to a release of a lien made by Seller against the Property. Purchaser shall pay all other costs related to Closing, including escrow and settlement fees, document preparation fees, recording fees, costs related to inspections, premiums with respect to a policy of title insurance, and/or any survey of the Property which Purchaser desires to obtain. The parties acknowledge that this transfer is exempt from transfer taxes and conveyance fees.

9. Damage to Property. Risk of loss with respect to the improvements on the Property shall be borne by Seller until the Closing, and shall be assumed by Purchaser of the date and time of Closing.

10. Possession. Possession of the Property shall be provided to Purchaser at Closing. Seller represents that they shall evict the current tenants of the Property at Seller's cost prior to Closing.

11. No Brokers. Seller and Purchaser acknowledge, warrant, and represent to each other that no real estate broker or agent has been involved in this Agreement or the sale of the Property, and that neither party shall have an obligation to pay a real estate commission to any agent or broker, except for Susanne Anton and Sibcy Cline, who is acting as the broker for Seller and who shall be paid by Seller pursuant to a separate agreement. Seller shall indemnify and hold Purchaser harmless from and against the claims of any broker(s) or agent(s) claiming a commission by, transfer, or under the Seller. This Section 11 shall survive the Closing.

12. Remedies. If Purchaser fails or refuses to complete the purchase of the Property in accordance with the terms and conditions of this Agreement for any reason other than a breach by Seller, or a failure of Seller's title or the non-fulfillment of any other condition precedent provided herein or the termination of this Agreement pursuant to a specific right to do so, then the parties recognize and agree that Seller's damages will be difficult, if not impossible, to ascertain. Therefore, the parties agree that if Purchaser defaults, Seller shall have the right to retain the Deposit as liquidated damages. Seller's right to retain the Deposit shall constitute the waiver by Seller of all other rights and remedies against Purchaser, and Purchaser shall be relieved of all other liability or damages to Seller whatsoever, except for those obligations expressly stated to survive the termination of this Agreement. If Seller fails or refuses to comply with the terms of this Agreement or otherwise defaults

under this Agreement, Purchaser may pursue any legal or equitable rights and remedies available to Purchaser, including, if the same occurs prior to the Closing, the right to seek specific performance, or the right to terminate this Agreement, to seek reimbursement of the Deposit paid and to collect from Seller an amount equal to the reasonable out-of-pocket expenses incurred by Purchaser in its due diligence efforts related to the Property.

13. Notice. All notices required or permitted by this Agreement shall be in writing, and shall be deemed properly delivered when and if (i) hand delivered; (ii) sent by Federal Express or other nationally recognized overnight courier service; (iii) deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested; at their respective addresses set forth above.

14. Authority. Purchaser and Seller represent and warrant to the other that each has the legal right, power, capacity and authority to enter into and perform its obligations under this Agreement.

15. Entire Agreement; Amendment. This Agreement contains the entire agreement between the parties hereto and no modification or amendment shall be binding upon any party unless made in writing and signed by each of the parties hereto.

16. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be construed in accordance with the laws of the State of Ohio, and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors in interest, and/or designees or assigns.

17. Time is of the Essence. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically to be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day.

18. Counterparts; Facsimile/Electronic Mail. This Agreement may be executed via facsimile or email (PDF) and in one or more counterparts, or by digital signatures, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

19. Rule of Construction. This Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

20. Survival. Except as otherwise expressly provided herein, no term, provision, condition, obligation, representation or warranty set forth herein shall survive the Closing or earlier termination of this Agreement.

21. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision

of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party.

22. Disclosure of Condition. Seller has not completed and attached to this Agreement a Residential Property Disclosure Form pursuant to Section 5302.30 of the Ohio Revised Code because this transaction involves "[a] transfer to or from the state, a political subdivision of the state, or another governmental entity" as contemplated in Section 5302.30(k).

23. LIMITATION OF LIABILITY; DISCLAIMER. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR THE DEED, IT IS UNDERSTOOD AND AGREED THAT SELLER AND ITS RELATED PARTIES DISCLAIM ALL WARRANTIES, REPRESENTATIONS OR COVENANTS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING ANY WARRANTIES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, VALUE, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY. PURCHASER AGREES THAT WITH RESPECT TO THE PROPERTY AND EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF ANY SELLER RELATED PARTY. PURCHASER REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT PURCHASER IS RELYING SOLELY ON THE EXAMINATIONS AND ITS OWN EXPERIENCE AND ITS OWN CONSULTANTS, AND PURCHASER, AS OF THE CLOSING, WILL HAVE CONDUCTED SUCH EXAMINATIONS OF THE PROPERTY, INCLUDING PHYSICAL AND ENVIRONMENTAL CONDITIONS, AND WILL RELY UPON THE SAME AND, UPON CLOSING, WILL ASSUME THE RISK OF ALL ADVERSE MATTERS INCLUDING ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS WHICH MAY OR MAY NOT HAVE BEEN REVEALED BY PURCHASER'S EXAMINATIONS.

IN TESTIMONY WHEREOF, the parties hereto have executed and delivered this Agreement as of the Effective Date.

SELLER:

PURCHASER:

CITY OF LOVELAND, OHIO

Peter S. Ross Trustee
Peter S. Ross, Trustee of the Ross Family
Revocable Living Trust u/a/d May 22, 2006

By: _____
Name: David Kennedy
Its: City Manager

APPROVED AS TO FORM:

Matthew D. Ross, Trustee of the Ross Family
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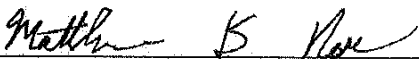
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Joseph J. Braun, Esq., Solicitor

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CITY FISCAL OFFICER’S CERTIFICATE

The undersigned, fiscal officer of the City of Loveland under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2019 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: _____, 2019

Finance Director
City of Loveland, Ohio

Exhibit A

(Legal Description of Property)

Parcel I:

Situated in City of Loveland, Miami Township, Clermont County, Ohio and being part of Lots 19, 20, 21 and 29 of the City of Loveland Subdivision as recorded in Plat Book F, Page 56, of the Clermont County, Recorder's Office;

Beginning at an iron pin found at the southwest corner of said Lot 22, said point being in the east line of First Street;

Thence in and along the west line of said Lots 22, 21 and 20 and the east line of said First Street N. $21^{\circ} 00' 00''$ E. a distance of 91.50 feet to an iron pin set and the real point of beginning for this description;

Thence continuing in and along said east line of said First Street N. $21^{\circ} 00' 00''$ E. a distance of 98.00 feet to an iron pin set;

Thence leaving said east line of said First Street S. $69^{\circ} 00' 00''$ E. a distance of 100.00 feet to an iron pin set;

Thence N. $21^{\circ} 00' 00''$ E. a distance of 100.00 feet to an iron pin set;

Thence S. $69^{\circ} 00' 00''$ E. a distance of 172.00 feet to an iron pin set;

Thence S. $21^{\circ} 00' 00''$ W. a distance of 216.50 feet to an iron pin set in the west line of Second Street;

Thence leaving said west line of said Second Street S. $65^{\circ} 06' 30''$ E. a distance of 272.63 feet to the real point of beginning for this description, passing at 172.40 feet to an iron pin set;

Containing in all 1.0646 acres more or less subject to all legal highways and easements of record.

Parcel II:

Situated in City of Loveland, Miami Township, Clermont County, Ohio, and being all of Lot 22 and part of Lots 20, 21 and 29 of the City of Loveland Subdivision as recorded in Plat Book F, Page 56, of the Clermont County Recorder's Office;

Beginning at an iron pin found at the southwest corner of said Lot 22, said point being in the east line of First Street;

Thence in and along the west line of said Lots 22, 21 and 20 and the east line of said First Street N. $21^{\circ} 00' 00''$ E a distance of 91.50 feet to an iron pin set;

Thence leaving said east line of said First Street S $65^{\circ} 06' 30''$ E. a distance of 272.63 feet to an iron

pin set in the west line of Second Street, passing at 100.23 feet an iron pin set in the east line of said Lot 21;

Thence S 21° 00' 00" W and along said west line of said Second Street a distance of 73.00 feet to an iron pin found;

Thence leaving said west line of said Second Street in and across said Lot 29 and in and along the south line of said Lot 22, N 69° 00' 00" W a distance of 272.00 feet to the rear point of beginning for this description.

Containing in all 0.5316 acres (22,372 SF) more or less subject to all legal highways and easements of record.

The above described premises is part of the same premises described as recorded in Deed Book 593, Page 536, of the Clermont County Ohio Deed Records and identified as parcel number

Clermont County PIDNs: 200602.022, 200602.021A, 200602.020B, 200602.020A, 200602.019B, 200602.029E, 200602.029F, 200602.029D, and 200602.029C.

Parcel III

Clermont County PIDN: 200602.020C, being a part of that certain property conveyed to Seller herein pursuant to Deed Book 2536, Page 812

Parcel IV

Clermont County PIDN: 200602.021B, being a part of that certain property conveyed to Seller herein pursuant to Deed Book 2536, Page 812