

**ASSIGNMENT OF PROPERTY SALE AND PURCHASE AGREEMENT**

FOR GOOD AND VALUABLE CONSIDERATION (hereinafter described), West Creek Preservation Committee ("**Assignor**") assigns to the City of Parma, Ohio ("**Assignee**") all of Assignor's right, title and interest in and to that certain Property Sale and Purchase Agreement dated February 3, 2016 as amended ("**Agreement**") by and between Assignor, as buyer, and Emilie A. Lupiani, as seller, a copy of which is attached hereto for reference, pertaining to that certain real property designated as Permanent Parcel No. 451-31-003 ("**Property**").

Assignor shall indemnify and hold and save harmless Assignee from and against any liability, loss, damage, cost or expense incurred by Assignee by reason of or arising out of the assignment of the Agreement, which may be made against or incurred by Assignee up to the date that Assignee takes title to the Property.

In consideration of the Assignment of the Agreement and Assignee's acquisition of the Property, Assignor shall, on or before July 31, 2017, fully reimburse Assignee for the purchase price paid by Assignee for the Property as well as any and all costs and expenses incurred by Assignee for the closing of such transaction.

IN WITNESS WHEREOF, this Assignment has been executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**West Creek Preservation Committee**

By: \_\_\_\_\_  
Derek Schafer, Executive Director

By: \_\_\_\_\_  
Jeffrey W. Lennartz, Board Chair

**ACCEPTANCE AND ASSUMPTION**

Assignee hereby accepts the foregoing Assignment and hereby covenants and agrees to assume and perform all the terms, conditions, covenants, obligations and agreements contained in the Agreement, with the exception of the indemnification provisions contained in section 4(C) of the Agreement, which shall continue to be binding upon Assignor. Assignee shall convey a Conservation Easement to Assignor immediately after conveyance of title to the Property to Assignee.

**City of Parma, Ohio**

By: \_\_\_\_\_  
Mayor, City of Parma



## Property Sale And Purchase Agreement

This Property Sale and Purchase Agreement ("Agreement") is made by and between:

Emilie A. Lupiani  
4439 Sexton Road  
Cleveland, Ohio 44105

and West Creek Preservation Committee  
P.O. Box 347113  
Parma, Ohio 44134

("Seller")

("Buyer")

Seller and Buyer are sometimes referred to individually as "Party" or together as "Parties".

### RECITALS:

- A. Seller is the owner of Property (hereinafter defined) which Buyer desires to purchase and Seller is willing to sell to Buyer on the terms and conditions set forth herein.
- B. The Agreement shall be effective upon the date of the last of Seller and Buyer to execute this Agreement ("Effective Date").

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the adequacy, sufficiency and receipt of which the Parties hereby acknowledge, and intending to be legally bound, the Parties agree as follows:

#### 1. Sale and Purchase of Property.

##### A. Property.

- i. Seller owns a parcel of unimproved real estate on Mazepa Trail in Parma, Ohio, known as Sublot 23A of Southern Hills Estates Subdivision, identified as Permanent Parcel No. 451-31-003 and legally described on Exhibit A attached hereto ("Seller's Parcel").
- ii. Seller shall sell to Buyer and Buyer shall purchase from Seller, upon the terms and conditions hereof, Seller's Parcel together with all the easements, appurtenances, rights, privileges and hereditaments belonging to or in any way appertaining thereto or thereunto belonging (collectively, "Property").

- B. As Is. Buyer acknowledges that the Property is being purchased in its present "As Is" condition, and no warranties, representations or statements concerning the condition or value of the Property other than what is included in this Agreement have been relied upon by Buyer.

2. **Purchase Price.**

Buyer agrees to pay Seller, in the total sum of \$34,000 as the purchase price for Property ("Purchase Price"). The Purchase Price, less the sum of prorations, adjustments and other credits to which Buyer is entitled shall be deposited by Buyer with Escrow Agent (as designated on the signature page of this Agreement).

3. **Escrow Agent.**

"Escrow Agent" shall be the Title Company (also designated on the signature page of this Agreement). Immediately following the Effective Date, Buyer shall open an escrow account with Escrow Agent. This Agreement shall serve as escrow instructions and shall be subject to the usual conditions of acceptance of Escrow Agent insofar as the same are not inconsistent with any of the terms hereof.

4. **Buyer's Due Diligence.**

A. **Title Commitment.** Buyer shall have the right to order and obtain, at Buyer's expense, a current title commitment ("Title Commitment") and special tax search issued by the Title Company setting forth the state of the title of the Property and all exceptions, including easements, restrictions, rights-of-way, covenants, reservations, and other conditions, if any, affecting the Property which would appear in an Owner's Policy of Title Insurance ("Title Policy"), if issued by the Title Company. Buyer shall provide a copy of the Title Commitment to Seller upon receipt.

B. **Inspections.** Buyer or Buyer's agents shall have the right and permission, at Buyer's expense, to enter upon Property, or any part thereof, after the Effective Date, at all reasonable times and from time to time prior to termination of this Agreement for the purpose of making all inspections, tests, surveys and studies (collectively, "Inspections") required to determine the suitability of Property for Buyer's purposes as Buyer shall solely determine (which shall include without limitation, physical inspections, environmental assessments, soil tests, evaluation of utilities, etc.). Seller shall cooperate with Buyer and/or Buyer's agents in providing information and access to the Property necessary to complete the Inspections.

C. **Indemnity.** Buyer shall indemnify and hold Seller harmless of, from and against any and all liabilities, suits, claims, losses, costs and expenses, including, without limitation, court costs and reasonable attorneys' fees, costs and damages sustained by or asserted against Seller or the Property, including, but not limited to, physical damage, physical injury to Buyer's employees, agents or contractors and any mechanics, and materialmen liens, caused as a result or arising out of or in connection with any Inspections conducted by Buyer or Buyer's agents.

5. **Contingencies during Contingencies Period.**

A. Buyer's obligations under this Agreement are subject to the following Contingencies ("Contingencies"):

- i. **Title.** Buyer obtaining a Title Commitment (and, ultimately, a Title Policy) from Title Company showing that the state of title to Property is satisfactory to Buyer and that Property is subject to only those liens, encumbrances, defects, restrictions, conditions, easements or other agreements to which no objection has been made by Buyer (collectively "Permitted Exceptions").
- ii. **Inspections.** Buyer obtaining Inspections of Property, at Buyer's expense, showing the Property to be acceptable to Buyer in Buyer's sole discretion.

**B. Contingencies Period.**

Buyer shall have until April 30, 2016 ("Contingencies Period") in which to evaluate and/or obtain resolution of Contingencies.

**6. Resolution of Contingencies.**

- A. **Approval.** Buyer shall endeavor to give Seller notice of Buyer's satisfaction with and/or waiver of any of the Contingencies promptly upon such determination.
- B. **Disapproval.** On or before the expiration of the Contingencies Period, Buyer shall notify Seller if Buyer is not satisfied with any aspect of the Contingencies and this Agreement shall be deemed terminated thereupon. Upon termination of this Agreement pursuant to this Paragraph 6, both Seller and Buyer released from all liabilities and obligations under this Agreement.

**7. Closing Arrangements.**

- A. **Closing Obligations.** Provided Contingencies are satisfied and/or waived by Buyer by the end of the Contingencies Period as herein provided with no material adverse change in the status thereof, this transaction shall commence to be closed at the office of the Escrow Agent, on May 30, 2016 ("Closing Date") or on such other Closing Date as may be mutually agreed by the Parties.
  - i. On or before the Closing Date, Seller shall execute, acknowledge and deliver such affidavits, resolutions and other documents which the Title Company shall reasonably require in order to issue the Title Policy and to omit from the Title Policy all exceptions for judgments, mechanics liens and similar matters.
  - ii. On or before the Closing Date, Seller shall deliver to Escrow Agent a General Warranty Deed ("Deed"), duly executed and in proper form for recording conveying to Buyer fee simple, marketable and insurable title to the Property, free and clear of all liens and encumbrances except Permitted Exceptions.
  - iii. At Closing, Title Company will issue to Buyer the Title Policy in the full amount of the Purchase Price issued in accordance with the form of Title Commitment approved by Buyer during the Contingencies Period without any intervening liens, encumbrances or exceptions.

- B. **Escrow Agent's Closing Obligations.** At the Closing Date, after causing the filing of the Deed, Escrow Agent shall close this transaction as follows:
- i. Credit Seller and charge Buyer with the Purchase Price deposited in escrow.
  - ii. Charge Seller and pay to the Cuyahoga County Treasurer all sums due for unpaid taxes and assessments applicable to the Property. Real estate taxes and assessments, both general and special, which have accrued but are not yet due and payable at Closing shall be prorated by the Escrow Agent according to the last available tax duplicate for the Property, and such proration shall be final. The credit for the portion of such real estate taxes and assessments for which Seller is obligated shall be remitted to Buyer by separate check at Closing from Seller's proceeds without adjusting the Purchase Price.
  - iii. Charge Seller with and pay to the payee entitled thereto:
    - a. 50% of the cost of the title examination, Title Commitment and Title Policy;
    - b. 50% of Escrow Agent's escrow fee;
    - c. any transfer tax and/or conveyance fee;
    - d. Seller's pro rata share of all items to be prorated in escrow; and
    - e. all other fees and charges which are required to be paid by Seller pursuant to this Agreement.
  - iv. Charge Buyer with and pay to the payee entitled thereto:
    - a. 50% of the cost of title examination, Title Commitment and Title Policy;
    - b. 50% of Escrow Agent's fee;
    - c. the cost of recording Deed; and
    - d. all other fees and charges which are required to be paid by Buyer pursuant to this Agreement.
  - v. Immediately following the Closing Date, Escrow Agent shall deliver the funds and documents as follows:
    - a. to Seller (or Seller's attorney, if Seller is represented by legal counsel), the funds and documents due Seller together with duplicate copies of the escrow statement, and
    - b. to Buyer (or Buyer's attorney, if Buyer is represented by legal counsel), the funds and documents due Buyer together with duplicate copies of the escrow statement.

8. **Possession.** Sole and exclusive possession of Property shall be delivered by Seller to Buyer on the Closing Date.

9. **Default.**

A. In the event of a material default hereunder by Seller, Buyer may elect to terminate this Agreement, in which event Buyer shall be entitled to the reimbursement of its reasonable expenses incurred in connection with the Contingencies and may, in addition, sue for specific performance.

B. In the event of a material default hereunder by Buyer, Seller may elect to terminate this Agreement, in which event both Parties shall be released from all liabilities and obligations under this Purchase Agreement or, alternatively, Seller may sue for specific performance.

10. **General Provisions.**

A. **Notices.**

i. All notices, elections, consents, demands and communications shall be in writing and delivered personally or by registered or certified mail, return receipt requested, postage prepaid or by any nationally recognized overnight courier service addressed to the other Party at their address first stated in this Agreement. Copies of notices shall be sent to the Attorneys for the respective Parties and Seller's Agent, if identified on the signature page. Either Party may, by written notice to the other, change the address to which notices are to be sent.

ii. Unless otherwise provided herein, all notices shall be deemed given when personal delivery is effected or when deposited in any branch, station or depository maintained by the U.S. Postal Service or the overnight courier service within the United States of America, except that a notice of a change of address shall be deemed given when actually received. Seller's affidavit of the date and time of deposit in a mailbox or with the overnight courier service or the postmark, whichever is earlier shall constitute evidence of the Effective Date when the notice has been given.

B. **Captions.** Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of the terms hereof.

C. **Entire Agreement.** This Agreement, together with the attached Exhibits, contains all of the terms and conditions of the Agreement between the Parties, and any and all prior and contemporaneous oral and written Agreements are merged herein. The Exhibits attached to this Agreement are hereby incorporated by reference in their entirety with the same force and effect as if they were set forth at length in this Agreement.

- D. **Modifications and Waivers.** This Agreement cannot be changed nor can any provision of this Agreement, or any right or remedy of any Party, be waived orally. Changes and waivers can only be made in writing and the change or waiver must be signed by the Party against whom the change or waiver is sought to be enforced. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.
- E. **Severability.** If one or more of the provisions of this Agreement or the application thereof shall be determined illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or any other application thereof shall in no way be affected or impaired.
- F. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Ohio.
- G. **Benefit of Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, successors and assigns.
- H. **Broker.** Seller and Buyer each warrant to the other that neither Party has dealt with any real estate broker in effecting this Agreement. Each Party shall hold the other harmless from any and all claims, demands, and attorney's fees resulting from any real estate broker's claims for real estate commission based upon dealings with such Party.
- I. **Limitation of Liability of Buyer.** Seller acknowledges and agrees that any agreement, obligation or liability made, entered into, assumed or incurred by or on behalf of Buyer pursuant to this Agreement or any instrument executed in connection herewith binds only the assets of Buyer and no member, officer, employee or agent of Buyer will be personally liable for any obligations or liabilities of Buyer under this Agreement or any other instrument executed in connection therewith, and neither Seller, nor any successor or assignee of Seller, or any other party will seek or be entitled to any personal judgment against any member, officer, employee or agent of Buyer, or their respective heirs, successors, representatives, administrators or assigns.
- J. **Assignment.** Buyer shall be entitled to assign this Agreement or any rights hereunder without Seller's prior written consent provided Buyer shall give written notice of such Assignment to Seller and the assignee shall assume in writing all the obligations of Buyer hereunder.
- K. **Counterparts.** This Agreement may be executed in multiple counterparts and shall be effective when such counterparts are executed by and delivered to all signatory Parties. Such counterparts shall be taken to be one and the same original document with the same effect as if all Parties hereto had signed the same document. Any executed signature page of this Agreement (together with any separate acknowledgment page) may be detached from any counterpart and attached to another counterpart containing the signature pages (and any acknowledgment pages) with the signatures (and acknowledgments) of all other signatory Parties to this Agreement.

L. **Electronic Execution.** For purposes of executing this Agreement and any other document to be executed in connection herewith (other than documents to be recorded), a document signed and transmitted by facsimile machine or other electronic transmission shall be treated as an original document. The signature of any party thereon shall be considered an original signature and the document transmitted shall be considered to have the binding legal effect as if it were originally signed. At the request of any party, any signed document sent by facsimile or other electronic transmission shall be re-executed in original form. No party hereto may raise the use of a facsimile or other electronic transmission, or the fact that any signature was transmitted through the use of a facsimile machine or other electronic transmission as a defense to the enforcement of this Agreement.

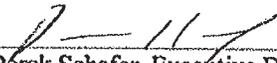
*[SIGNATURE PAGE FOLLOWS]*

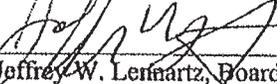
IN WITNESS WHEREOF, Seller, Buyer and Escrow Agent/Title Company have hereunto set their hands at the place and date set forth beneath their signatures.

Seller:

  
Emile A. Lupiani

Buyer: West Creek Preservation Committee

By:   
Derek Schafer, Executive Director

By:   
Jeffrey W. Lennartz, Board Chair

3915 N. Shore Drive, Akron, OH 44333  
(place)

1/18/2016  
(date)

1440 Rockside, Parma, OH 44134  
(place)

2/3/16  
(date)

Escrow Agent/Title Company:

Innovative Title and Escrow Company  
1440 Rockside Road, Suite 310  
Parma, Ohio 44134

By: \_\_\_\_\_

\_\_\_\_\_  
(place)

\_\_\_\_\_  
(date)

Buyer's attorney:

Ziegler Metzger LLP  
Christopher E. Soukup  
925 Euclid Avenue, Suite 2020  
Cleveland Ohio 44115  
t: 216.781.5470  
f: 216.781.0714  
[ces@zieglermetzger.com](mailto:ces@zieglermetzger.com)

**EXHIBIT A**

**LEGAL DESCRIPTION**

Situated in the City of Parma, County of Cuyahoga and State of Ohio: and known as being Sublot No. 23A in the Re-Plat of Southern Hills Estates Sublot Nos. 22 and 23 as recorded in Book Volume 244, Page 46 of Cuyahoga Map Records of part of Original Parma Township Lot No. 13, Ely Tract, as shown by the recorded Plat in Volume 333, Page 56 of Cuyahoga County Map Records, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel No. 451-31-003

Known as: S/L 23 Mazepa Trail, Cleveland, Ohio 44134

AMENDMENT NO. 1

**TO  
PROPERTY SALE AND PURCHASE AGREEMENT**

This Amendment No. 1 to Property Sale and Purchase Agreement ("Amendment One") is made as of April 26, 2016 by and between

West Creek Preservation Committee  
P. O. Box 347113  
Parma, Ohio 44134

and

Emilie A. Lupiani  
4439 Sexton Road  
Cleveland, Ohio 44105

("Seller")

("Buyer")

**Recitals:**

- A. Seller and Buyer entered into a certain Property Sale and Purchase Agreement dated on or about February 3, 2016 ("Purchase Agreement") pertaining to a certain parcel of vacant land on Mazepa Trail in Parma, Ohio, known as Sublot 23A of Southern Hills Estates Subdivision, identified as Permanent Parcel No. 451-31-003 and legally described on Exhibit A attached to the Purchase Agreement.
- B. Seller and Purchaser desire to amend the Purchase Agreement upon the terms and conditions herein set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, the parties do hereby agree as follows:

1. Seller and Buyer agree to extend the Contingencies Period until September 30, 2016 to allow Buyer to obtain financing.
2. Seller and Buyer further agree to postpone the Closing Date until October 31, 2016.
3. Except as hereinbefore expressly modified in this Amendment One, the Purchase Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands as of the date first aforesaid.

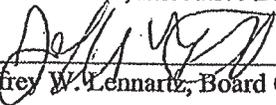
Buyer:

Seller:

West Creek Preservation Committee

By:   
Derek Schafer, Executive Director

Emilie A. Lupiani

By:   
Jeffrey W. Lennartz, Board Chair

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PROPERTY SALE AND PURCHASE AGREEMENT**

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P. O. Box 347113  
Parma, Ohio 44134

and

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Cleveland, Ohio 44105

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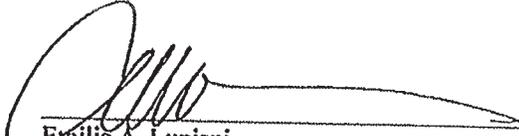
Buyer:

West Creek Preservation Committee

By: \_\_\_\_\_  
Derek Schafer, Executive Director

By: \_\_\_\_\_  
Jeffrey W. Lennartz, Board Chair

Seller:

  
Emilie A. Lupiani