

REAL ESTATE PURCHASE OPTION AGREEMENT

THIS REAL ESTATE PURCHASE OPTION AGREEMENT (the “Agreement”) is made this ___ day of _____, 2023 (the “Execution Date”) by and between **THE CITY OF WILLOWICK** (“City”), **THE LAKE DEVELOPMENT AUTHORITY** (“LDA”), and **KURTZ BROS. INC.**, an Ohio for profit corporation and/or its assign (“Purchaser”) (City, LDA, and Purchaser are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

For consideration paid by Purchaser to the Title Company (hereinafter defined) to be held in escrow, as defined herein (the “Option Payment”) and other good and valuable consideration, the receipt of which is acknowledged, the parties hereto agree as follows:

1. GRANT OF OPTION. City hereby grants to the LDA and the LDA in turn grants to Purchaser, on the terms and conditions set forth in this Agreement, the exclusive option (the “Option”) to purchase that certain portion of land of approximately +/-6.254 acres and all improvements thereupon located in the City of Willowick, Lake County Ohio, bearing Permanent Parcel No. 28-A-040-0-00-024-0, and having a depiction of the property attached hereto as Exhibit “A” (the “Property”). Sale of the Property from City to LDA and then to Purchaser will include all appurtenant rights, privileges and easements incident thereto. Notwithstanding Exhibit “A”, the exact measured boundaries of the Property will be determined by the parties in connection with the preparation of the Survey, but to the extent required by law, shall be subject to the approval of City officials. This Option shall be executed by: a) Purchaser notifying LDA of its desire to trigger the Option; b) upon receipt of Purchaser’s notice triggering the Option then LDA shall, as soon as practicable, notify City of its trigger of the Option; and c) City shall acknowledge its receipt and acceptance of the triggered Option providing notice of same to both LDA and Purchaser as soon as practicable.

2. OPTION PERIOD. The Option shall be exercised by LDA and Purchaser, if at all, on or before January 31, 2024. (the “Option Period”). Following the Option Period, if any, the parties hereto may mutually agree to extend the term hereof for whatever duration they may all mutually agree. If Purchaser fails to exercise its Option during the Option Period, the Option shall terminate on the last day of the Option Period, and shall be of no further force and effect unless extended as provided for hereinabove. Purchaser’s obligations under Paragraph 7 and Paragraph 15 shall survive.

3. PURCHASE PRICE AND PAYMENT. The purchase price that Purchaser shall pay LDA and that LDA shall pay City for the Property shall be Four Hundred Sixty Thousand Dollars and NO/100 (\$460,000.00) (the “Purchase Price”) payable at closing. This Agreement contemplates a simultaneous closing of the purchase with the Title Company of the Property by LDA from City and by Purchaser from LDA with LDA taking title to the Property but, along with City, not being responsible for any expenses to close.

4. SURVEY. Prior to the closing and if so desired, Purchaser shall, at its sole cost, obtain a survey and metes and bounds description of the Property prepared by a surveyor of

Purchaser's choice (the "Survey"). The Survey shall, at Purchaser's option, be prepared in accordance with the equivalent of the minimum detail and classification requirements for ALTA/ACSM land title surveys, as adopted in 2016 by ALTA/ACSM. The Survey shall be dated as of a date not more than three (3) months prior to the Closing Date, and certified to Purchaser, Purchaser's lender or funders (if any), LDA, City, and the Title Company. The legal description prepared from the Survey shall then be used in the Deeds (hereinafter defined) transferring the Property, provided that the description is approved by all appropriate governmental authorities and by the Title Company.

If the Survey shows conditions objectionable to Purchaser, then Purchaser shall notify LDA and LDA shall notify City of its objection to any such matter(s) (the "Survey Objections"). City may, but shall have no obligation to, remedy or remove the Survey Objections. However, if City fails or is unable to remove any such Survey Objections prior to the Closing Date, then Purchaser's sole remedy shall be either to: a) terminate this Option Agreement, in which event the Option Payment shall be refunded to Purchaser at which time the Parties shall be released from all further obligations under this Agreement (except that Purchaser's obligations under Paragraph 7 and Paragraph 15 shall survive); or, b) waive the objections and accept such title as City is able to convey to LDA and LDA to Purchaser, without abatement of the Purchase Price.

5. DEED. At the Closing, City shall execute and deliver a transferable, recordable quitclaim deed conveying the Property to LDA with a good and marketable title to the Property in fee simple, free from all defects, liens, easements, restrictions, covenants, encroachments, and any other encumbrances, except the following (the "Permitted Encumbrances"): a) real estate taxes and assessments not yet due and payable (if any); b) existing public highways and utility easements as may be approved by Purchaser pursuant to Section 6; c) covenants, restrictions and easements of record; and (d) zoning and building laws, codes, and ordinances. The Permitted Encumbrances also shall include any matters waived or deemed waived by Purchaser pursuant to Section 6. LDA shall then immediately and simultaneously execute a transferable, recordable Quitclaim Deed (collectively, the "Deeds") conveying the Property to Purchaser.

6. TITLE. Upon execution of this Agreement, Purchaser shall, with the written consent of City and, if necessary, LDA, order an examination of the title to the Property and commitment for an owner's policy of title insurance on the Property (the "Commitment") issued by Acacia Title Agency, 41 E. Erie St., Painesville, Ohio 44077, (the "Title Company") and dated not more than sixty (60) days after the Execution Date, pursuant to which the Title Company shall commit to issue an ALTA (2006) owner's policy of title insurance insuring Purchaser's title to the Property in the full amount of the Purchase Price with endorsements for access, boundary survey, and other endorsements as Purchaser may reasonably request. If the Commitment shows that City does not have marketable, fee simple title to the Property, or that there are any defects, liens, easements, restrictions, covenants, encroachments or any other encumbrances, other than those exceptions described in Section 5, then Purchaser shall notify City of its objection to any such matter(s) (collectively the "Title Objections"). With respect to Title Objections, City may, but shall have no obligation to, remedy or remove the Title Objections. However, if City fails or is unable to remove any such Title Objections prior to the expiration of this Option, or, if this Option is exercised, prior to the Closing Date, then Purchaser's sole remedy shall be either to: a) terminate this Option Agreement, whether or not the Option has been exercised, in which event the Option

Payment shall be refunded to Purchaser at which time the parties shall be released from all further obligations under this Agreement (except that Purchaser's obligations under Paragraph 7 and Paragraph 15 shall survive) or, b) waive the objections and accept such title as City is able to convey, without abatement of the Purchase Price. If the Option Agreement terminates, for whatever reason, without closing, then Purchaser shall be responsible for any and all costs incurred, including attorney's fees, with the Title Company, the City and the LDA pursuant to this Agreement.

At the Closing, City shall furnish Purchaser and the Title Company with an owner's affidavit as to mechanics' and materialmen's liens, persons in possession of the Property, and similar title matters required by the Title Company as a condition of its deletion of the standard printed General Exceptions from the title policy. Such affidavit shall be in form and substance reasonably acceptable to City and permissible pursuant to all applicable laws, statutes, ordinances, rules and regulations.

7. RIGHT OF ENTRY. At all times either: a) prior to the expiration of this Option or b) subsequent to the exercise of the Option but prior to the Closing, Purchaser, its agents, employees, contractors, and representatives, shall have the right, at reasonable times and with prior written notice to City, to enter upon the Property for the purposes of conducting soil tests, engineering studies, land planning, and other testing and exploration work necessary or appropriate to formulate plans and determine the suitability of the Property for Purchaser's use of the Property, provided (i) Purchaser has delivered to City written request of such entry at least forty-eight (48) hours in advance of such entry and (ii) City has approved of the time of such entry and the manner and purpose of such entry, which approval shall not be unreasonably withheld, conditioned or delayed. City shall be permitted to be present during any entry of the Property. Purchaser shall defend, indemnify and save harmless City and LDA from any and all claims, losses, damages and expenses arising from the entry onto the Property by Purchaser, its agents, employees, contractors and representatives. Purchaser agrees to return or restore the Property to substantially its original state within a reasonable time after the tests are conducted, not to exceed thirty (30) days after completion of the tests. If Purchaser does not exercise this Option, then, upon City's request, Purchaser shall provide to City, without cost, a copy of all inspection reports, studies, and similar information obtained by Purchaser with respect to the Property.

8. TAXES/WATER & SEWER CHARGES. The Parties agree and acknowledge that the Property taxes, water and sewer charges associated with the Property are currently being paid by Purchaser. In no event shall City or LDA be responsible for any real estate taxes, water or sewer charges imposed on the Property that are due and payable as of the date of Closing or after Closing.

9. CITY/LDA ASSISTANCE. From time to time, at the request of Purchaser, whether before, at, or after the Closing of the conveyance of the Property to Purchaser, and without further consideration, City and the LDA shall execute and deliver, and/or join with Purchaser in executing and delivering, such applications for licenses, variances, zoning changes, approvals, permits and consents from governmental bodies, utility companies, financial institutions and other entities and shall supply such information, arrange such meetings, and execute such forms and take such action as Purchaser may reasonably request in order to proceed with and fully implement

Purchaser's use of the Property or to effectuate the transactions contemplated by this Agreement; provided, however, that neither City nor LDA shall be required to incur any expenses in connection with these matters.

10. CONDITION OF THE PROPERTY.

- a) As-Is" Condition. PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT PURCHASER WILL HAVE, AS OF THE CLOSING DATE, THOROUGHLY INSPECTED AND EXAMINED THE STATUS OF TITLE TO THE PROPERTY AND THE PHYSICAL CONDITION OF THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE IT TO EVALUATE THE PURCHASE OF THE PROPERTY. PURCHASER HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, CITY'S IMPROVEMENTS, AND THE OTHER DELIVERY OBLIGATIONS REQUIRED BY CITY UNDER THIS AGREEMENT, PURCHASER IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION, AND EVALUATION OF THE PHYSICAL CONDITION OF THE PROPERTY BY PURCHASER AND THAT PURCHASER IS PURCHASING, AND AT CLOSING WILL ACCEPT, THE PROPERTY ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS, WARRANTIES AND/OR COVENANTS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE. PURCHASER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CITY AND LDA HAVE MADE NO AGREEMENT TO ALTER, REPAIR OR IMPROVE THE PROPERTY.
- b) Reliance on Information. Except as specifically set forth in this Agreement, the Parties acknowledge and agree that they have not, and shall not, rely upon any statement and/or information from whomsoever made or given, including, but not limited to, any broker, attorney, agent, employee or other person representing or purporting to represent another party to this Agreement, directly or indirectly, verbally or in writing, and such other party is not and shall not be liable or bound by any such statement and/or information.
- c) Disclaimer of Representations. Except as specifically set forth in this Agreement, City specifically disclaims any representation, warranty or guaranty with respect to the Property, express or implied, including, but not limited to, any representation or warranty as to the Property's condition, fitness for a particular purpose, quality, freedom from defects or contamination, whether or not detectable by inspection, compliance with zoning or other legal requirements or as to the availability or existence of any utility or other governmental or private services or as to the amount of taxes assessed to the Property. Likewise, except as specifically set forth in this Agreement, LDA specifically disclaims any representation, warranty or guaranty with respect to the Property, express or implied, including, but not limited to, any

representation or warranty as to the Property's condition, fitness for a particular purpose, quality, freedom from defects or contamination, whether or not detectable by inspection, compliance with zoning or other legal requirements or as to the availability or existence of any utility or other governmental or private services or as to the amount of taxes assessed to the Property.

11. CONTINGENCIES. Purchaser's consummation of its purchase of the Property and thus LDA's consummation of the purchase of the Property is specifically contingent upon Purchaser satisfactorily obtaining the consents or approvals, in its sole discretion, on or before the Closing Date, of: a) obtaining a conditional use permit or other permit to allow Purchaser to utilize the Property as it intends under the City zoning codes; b) obtaining City and County approval, as required, for all utility connections, building and site plan and design, governmental permits and licenses required for operation (if any); c) completion of a Phase I environmental report on the Property and, if required, a Phase II environmental review; and d) obtaining sufficient funding for the acquisition of the Property contemplated herein and all improvements desired by Purchaser for its use of the Property.

12. CLOSING DATE AND CONDITIONS. The closing for the delivery of the Deeds and other instruments contemplated by this Agreement and payment of the balance of the Purchase Price in accordance with the provisions of Paragraph 3 ("Closing") shall be not more than sixty (60) days following the expiration of the Option Period (the "Closing Date"). The Closing shall be held at the Title Company. Purchaser shall pay all of the closing costs associated with this transaction. Purchaser shall also be responsible for the LDA's attorneys' fees and other costs of the transaction in connection with the sale, including but not limited to costs related to any lot split or land survey, which shall be paid by the Closing Date.

13. CLOSING CONDITIONS. The Closing is subject to satisfaction of the following conditions precedent: a) obtaining consents and approvals detailed in Section 11 hereinabove to Purchaser's sole satisfaction; b) City's and LDA's delivery of such documents or instruments, in form and substance reasonably satisfactory to Purchaser; c) City's and LDA's delivery to the Title Company of a "non-foreign affidavit" or like documents as required under Section 1445 of the Internal Revenue Code and the regulations promulgated hereunder; d) City's and LDA's delivery of any other instruments reasonably required by Title Company or Purchaser as a condition of closing this transaction, including, but not limited to, evidence of authority of the person signing documents on behalf of City and LDA, a settlement statement, affidavits, or indemnity agreements to the Title Company against liens and parties in possession, and tax transfer statements.

14. POSSESSION. City shall deliver exclusive possession of the Property to LDA and LDA to Purchaser on the Closing Date. It is expressly understood by City and Purchaser that LDA is facilitating this transaction in its capacity as a body corporate and politic, duly organized and validly existing under the laws of the state of Ohio and specifically as enumerated and provided in Ohio Revised Code Section 4582.

15. DEFAULT; NON-EXERCISE OF OPTION.

a) Should City or LDA default in the performance of any of its obligations set forth in

this Agreement, then, whether or not this Option is exercised, Purchaser may terminate this Agreement. If Purchaser elects to terminate this Agreement due to City's or LDA's default, Purchaser shall receive the Option Payment and City or LDA shall have no further liability whatsoever to Purchaser.

- b) Purchaser shall have the right to retain the Option Payment if Purchaser fails to exercise the Option prior to the expiration of the Option Period provided in Paragraph 2. In the event that Purchaser exercises the Option, but following exercise, Purchaser fails to close the purchase by the Closing Date (unless the failure is caused by City's or LDA's default or breach of their obligations hereunder), then this Agreement shall terminate and City shall retain the Option Payment as full and complete compensation for City's granting of the Option to LDA and LDA to Purchaser. Upon termination, the parties shall be released from all further liabilities and obligations under this Agreement except for Purchaser's obligations under Paragraph 7 and 15 and Purchaser's obligation to pay all costs and fees, including attorney's fees, of City and LDA. Receipt of the Option Payment shall be City's sole and exclusive remedy in the event of Purchaser's default after exercise of the Option, and, except for any liabilities of Purchaser under Paragraph 7, City waives all other claims, rights, and remedies, either at law or in equity, against Purchaser and LDA.

16. NOTICES. This Option shall be exercised, if at all, by giving written notice of exercise prior to the expiration of the Option Period(s) as provided in Paragraph 2. The notice of exercise and any notice or other writing required or permitted to be given to a party under this Agreement shall be deemed given when delivered to that party's address as set forth below or when mailed by certified United States mail, postage prepaid, return receipt requested, or sent by email with a hard copy to follow, or when deposited with a nationally recognized overnight courier service, addressed as follows:

City: City of Willowick
Attn: Mayor Michael Vanni
30435 Lakeshore Blvd.
Willowick, Ohio 44095
Email: mvanni@cityofwillowick.com
Tel: (440) 585-3700

with a Copy to: Stephanie Landgraf, Esq.
Wiles & Richards
37265 Euclid Ave.
Willoughby, Ohio 44094
Email: slandgraf@wilesrichards.com
Tel: (440) 942-6262
Fax: (440) 942-7211

If to LDA: Lake Development Authority

Attn: David Anderson, Executive Director
105 Main St., 5th Floor
Painesville, Ohio 44077
Email: danderson@ldaauthority.org
Tel: 440-350.5345

with a copy to: Brandon D. R. Dynes, Esq.
Thrasher, Dinsmore & Dolan, LPA
100 7th Avenue, Suite 150
Chardon, Ohio 44024
Email: BDynes@tddl.com
Tel: (440) 285-2242
Fax: (440) 285-9423

If to Purchaser: Kurtz Bros., Inc.
6415 Granger Rd.
Independence, Ohio 44131

Email: rickc@kurtz-bros.com
Tel: (216) 986-7000

with a copy to: Attorney Thomas Boutall
6900 Granger Road, Suite 200
Independence, Ohio 44131
Email: tboutall@aol.com
Tel: 216-276-4944

17. BROKERAGE. Each party represents to the other that there is no broker or other person who may be entitled to a commission or similar fee in connection with this transaction.

18. CASUALTY; CONDEMNATION. City shall continue to hold liability insurance on the Property prior to Closing with coverages and amounts deemed appropriate by City. In the event that: a) during the Option Period specified in Paragraph 2 or b) after the exercise of the Option but before the Closing, the Property or any material portion of the Property shall be damaged or destroyed by fire, or taken or condemned by any governmental authority or other entity having the power of eminent domain, or City shall receive a notice of a proposed taking or condemnation, City shall immediately notify Purchaser in writing. Purchaser may then terminate this Agreement by giving written notice to City and LDA, in which event the Option Payment shall be refunded to Purchaser and the parties shall be released from all further obligations (except for any liabilities of Purchaser under Paragraph 7 and Paragraph 15).

19. MISCELLANEOUS.

- a) This Agreement constitutes the entire agreement between City, LDA, and Purchaser and no change in this Agreement may be made except by an agreement in writing signed by the party against whom enforcement of any change is sought.
- b) This Agreement shall be binding upon and inure to the benefit of City, the LDA, and Purchaser and their respective successors and assigns. No party shall assign this Agreement without the express written consent of all other parties.
- c) This Agreement shall be construed without reference to the headings and titles of the various sections and paragraphs, which are inserted for convenience of reference only.
- d) The covenants, agreements, representations, warranties and obligations of the parties in this Agreement shall survive the closing for a period of six (6) months.
- e) Time is of the essence of this Agreement.
- f) Whenever 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. This Agreement may be executed in separate counterparts, each of which, when executed and delivered, is deemed to be an original, and, both of which, taken together, are deemed to be one and the same document.
- g) This Agreement shall be governed by the laws of the State of Ohio. Venue for legal action initiated pursuant to this Agreement may only be commenced in the Court of Common Pleas of Lake County, Ohio.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first indicated above.

THE CITY OF WILLOWICK:

By: _____
Michael Vanni, Mayor

STATE OF OHIO)
) SS:
COUNTY OF LAKE)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the City of Willowick by Michael Vanni, its Mayor, who acknowledged that he did sign the foregoing instrument for and on behalf of said City, being thereunto duly authorized, and that the same is his free act and deed in such capacity on behalf of said City of Willowick.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 20__.

Notary Public

THE LAKE DEVELOPMENT AUTHORITY:

By: _____
Dave Anderson, Executive Director

STATE OF OHIO)
) SS:
COUNTY OF LAKE)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the Lake Development Authority by Dave Anderson, its Executive Director, who acknowledged that he did sign the foregoing instrument for and on behalf of said Lake Development Authority, being thereunto duly authorized, and that the same is his free act and deed in such capacity on behalf of said entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 20__.

Notary Public

EXHIBIT "A"
Depiction of the Property