

FOURTH AMENDMENT
TO
LEASE AGREEMENT BETWEEN
The Metropolitan Government of Nashville and Davidson County
AND
Nashville Zoo, Inc.

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (this "**Amendment 4**") is made this 10TH day of November, 2022, by and between THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, a Tennessee municipal corporation ("**Metro**"), and Nashville Zoo, Inc. ("**Zoo**").

RECITALS:

A. Metro and Zoo are parties to a Lease Agreement ("**Lease Agreement**") approved by O96-473 for property commonly known as Grassmere Wildlife Park ("**Grassmere Property**") for certain premises located at 3777 Nolensville Pike, Nashville, Tennessee (the "**Premises**") as more particularly described in the Lease Agreement; and

B. The Metropolitan Government FY 2021-22 Capital Spending Plan allocated \$15 million dollars to contribute toward a facility parking garage ("**Parking Garage**") serving the Zoo; and

C. The Zoo wishes to donate the property to Metro via quitclaim in which the Parking Garage will be sited; and

D. The Parties will enter into a participation agreement whereby the Zoo will build the Parking Garage ("**Improvements**"), all in accordance with the plans to be approved by the Metropolitan Department of Parks and Recreation, in exchange for a payment from Metro not to exceed \$15 million dollars, and convey the Improvements to Metro upon completion; and

E. The Parties wish to amend the Lease Agreement to incorporate the Parking Garage.

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and covenants contained herein and in the Lease Agreement, and intending to be legally bound hereby, agree that the Lease Agreement is hereby amended as follows:

1. **Effective Date.** This Amendment shall not be binding upon the parties until it has been signed first by the Zoo and the appropriate representatives of the Metropolitan Government, approved by the Metro Council, and then filed with the Metro Clerk (the date of filing with the Metro Clerk shall be referred to herein as the "**Fourth Amendment Effective Date**").

2. Authority. Metro and Nashville Zoo each represents and warrants that it has the authority to enter into this Amendment and to abide by the terms hereof, and that the signatory hereto is the authorized representative of such party and empowered by such party to execute this Amendment.

3. Parking Garage Incorporated. Upon the effective date of this Fourth Amendment, and successful completion of the Improvements, the Premises currently known by and referred to throughout the Lease Agreement as the Grassmere Wildlife Park (the "Grassmere Property") shall include the Improvements and the property in which the Improvements are sited, as further described in the quitclaim deed attached hereto as Exhibit A.

4. Revenue. Zoo is entitled to receive, collect and retain all revenue generated from the Improvements throughout the term of the Lease Agreement.

5. Affirmation. Except as expressly modified or amended herein, all of the terms, provisions and conditions of the Lease Agreement shall remain in full force and effect.

(Signatures follow on next page)

IN WITNESS WHEREOF, The Metropolitan Government of Nashville and Davidson County and The Nashville Zoo, Inc. have executed this Fourth Amendment to the Lease as of the day and year first above written.

**THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

LESSOR

Nashville Zoo, Inc.

BY:

Abraham Wescott

Public Property Administration

**APPROVED AS TO AVAILABILITY OF
FUNDS:**

Kelly Flanbery
Kelly Flanbery, Director
Department of Finance

tje

**APPROVED AS TO FORM AND
LEGALITY:**

Tara M. Ladd
Metropolitan Attorney

**FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:**

Date: _____

This instrument prepared by:

Metropolitan Department of Law
Metropolitan Courthouse, Suite 108
PO Box 196300
Nashville, Tennessee 37219

QUITCLAIM DEED

Address of New Owner:

Send Tax Bills To:

Metropolitan Government of Nashville
and Davidson County
Metropolitan Courthouse, Suite 106
Nashville, Tennessee 37219

Same (Exempt)

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

The actual consideration for this transfer is \$0.

Affiant

Subscribed and sworn to before me, this the _____ day of _____, 2022.

NOTARY PUBLIC

My Commission Expires: _____

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable consideration, the Nashville Zoo, Inc. ("Grantor"), a nonprofit corporation, by these presents, does hereby quitclaim and convey to the Metropolitan Government of Nashville and Davidson County, ("Grantee"), its successors and assigns, all Grantor's right, title and interest in and to that certain tract or parcel of land in Davidson County, Tennessee described in Exhibit 1 hereto and conveyed to Grantor by instrument number 20061229-0160467, RODC.

IN WITNESS WHEREOF, undersigned has hereunto set its hand on this the 22 day of November, 2022.

NASHVILLE ZOO, INC.

Kim Pridgen
Kim Pridgen, CFO

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, a Notary Public in and for said County and State, duly commissioned and qualified, personally appeared Kim Pridgen, CFO, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who upon oath, acknowledged herself to be CFO of the Nashville Zoo, Inc., the within named bargainer, and that she as such CFO, being authorized to do so, executed the foregoing instrument for the purpose therein contained, by personally signing on behalf of Nashville Zoo, Inc. as its representative.

Witness my hand and seal, at office this 22 day of November, 2022.

Tanika Diane George
NOTARY PUBLIC

My Commission Expires July 3, 2023

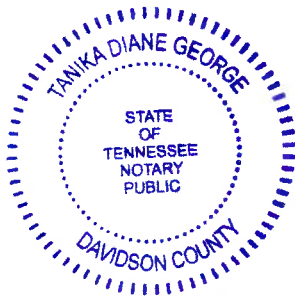


EXHIBIT 1

Beginning at an iron pin in the proposed southerly margin of CSX Transportation, Inc.'s operating railroad corridor, said point being 100.00 feet southerly from centerline station 153+10.78 of said railroad and being 676.20 feet, more or less, easterly along said railroad from Mile Post R-1; thence with said proposed margin, 100.00 feet south of and parallel to centerline of railroad, South 83 degrees 52 minutes 00 seconds East, 1516.74 feet to a point at Railroad Station 137+94.04 in the north line of Metropolitan Government of Nashville and Davidson County of record in Deed Book 9717, Page 291, R.O.D.C.; thence with said north line of Metropolitan Government, South 86 degrees 26 minutes 00 seconds West, 1521.24 feet to an iron pin; thence continuing with said Metropolitan Government, North 02 degrees 17 feet 00 seconds East, 256.89 feet to the Point of Beginning; Containing 194,381 square feet or 4.46 acres, more or less.

BEING more particularly shown on plat of survey dated 9/27/02 prepared by William C. Cockrill, Barge Waggoner, Sumner & Cannon, Inc., Registered Land Surveyor Number 1401, 211 Commerce Street, Suite 600, Nashville, TN 37201, incorporated herein by reference.

BEING a portion of the property acquired by Nashville Chattanooga and St. Louis Railway from Allied Chemical and Dye Corporation, by deed dated January 8, 1952, recorded among the Public Land Records of Davidson County, Tennessee, in Book 2033, Page 511.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is entered into and effective this 11th day of November, 2022, by and between Nashville Zoo, Inc. (the "Depositor") and Truist Bank, a North Carolina banking corporation, as the Escrow agent (the "Escrow Agent").

WHEREAS,

The Depositor desires for the Escrow Agent to open an account (the "Escrow Account") into which the Depositor will deposit funds to be held, invested and disbursed by the Escrow Agent in accordance with this Agreement.

WHEREAS, Nashville Zoo, Inc. and The Metropolitan Government of Nashville and Davidson County have entered into a Participation Agreement that requires 25% of the Contract Price to be placed in Escrow to comply with T.C.A § 12-4-201.

NOW, THEREFORE, in consideration of the premises herein, the parties hereto agree as follows:

I. Terms and Conditions

1.1. The Depositor hereby appoints the Escrow Agent as its Escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

1.2. The Depositor shall remit \$8,652,211 to the Escrow Agent, using the wire instructions set forth below, to be deposited into the Escrow Account and held by the Escrow Agent and invested and disbursed as provided in this Agreement.

Bank name: Truist Bank
Routing number: [REDACTED]
Account name: [REDACTED]
Account number: [REDACTED]
Bank Address: 919 E. Main Street, Richmond, VA 23219
For Further Credit (FFC) account name: Nashville Zoo Parking Garage

1.3. Within three Business Days of receipt of written instructions, signed by an authorized representative of the Depositor set forth on its Certificate of Incumbency provided to the Escrow Agent pursuant to Section 4.13, the Escrow Agent shall disburse funds as provided in such written instructions, but only to the extent that funds are collected and available. For purposes of this Agreement, "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth in Section 4.5 is authorized or required by law or executive order to remain closed.

II. Provisions as to Escrow Agent

2.1. This Agreement expressly and exclusively sets forth the duties of the Escrow Agent with respect to any and all matters pertinent hereto, which duties shall be deemed purely ministerial in nature, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall in no event be deemed to be a fiduciary to the Depositor or any other person or entity under this Agreement. The permissive rights of the Escrow Agent to do things enumerated in this Agreement shall not be construed as duties. In performing its duties under this Agreement, or upon the claimed failure to perform its duties, the Escrow Agent shall not be liable for any damages, losses or expenses other than damages, losses or expenses which have been finally adjudicated by a court of competent jurisdiction to have directly resulted from the Escrow Agent's willful misconduct or gross negligence. In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. Any wire transfers of funds made by the Escrow Agent pursuant to this Agreement will be made subject to and in accordance with the Escrow Agent's usual and ordinary wire transfer procedures in effect from time to time as provided in Exhibit C, the Truist Wealth Management Wire Transfer Agreement, for which the Parties shall execute on or before the release of any wire transfer of funds. The Escrow Agent shall have no liability with respect to the transfer or distribution of any funds affected by the Escrow

Agent pursuant to wiring or transfer instructions provided to the Escrow Agent in accordance with the provisions of this Agreement. The Escrow Agent shall not be obligated to take any legal action or to commence any proceedings in connection with this Agreement or any property held hereunder or to appear in, prosecute or defend in any such legal action or proceedings.

2.2. The Depositor acknowledges and agrees that the Escrow Agent acts hereunder as a Escrow only, and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Agreement or any part thereof, or of any person executing or depositing such subject matter. No provision of this Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Agreement.

2.3. This Agreement constitutes the entire agreement between the Escrow Agent and the Depositor in connection with the subject matter of this Agreement, and no other agreement entered into by the Depositor shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be deposited with the Escrow Agent or the Escrow Agent may have knowledge thereof.

2.4. The Escrow Agent shall in no way be responsible for nor shall it be its duty to notify the Depositor or any other person or entity interested in this Escrow Agreement of any payment required or maturity occurring under this Escrow Agreement or under the terms of any instrument deposited herewith unless such notice is explicitly provided for in this Agreement.

2.5. The Escrow Agent shall be protected in acting upon any written instruction, notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which the Escrow Agent in good faith believes to be genuine and what it purports to be, including, but not limited to, items directing investment or non-investment of funds, items requesting or authorizing release, disbursement or retainage of the subject matter of this Agreement and items amending the terms of this Agreement. The Escrow Agent shall be under no duty or obligation to inquire into or investigate the validity, accuracy or content of any such notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document. The Escrow Agent shall have no duty or obligation to make any formulaic calculations of any kind hereunder.

2.6. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Escrow Agent shall be entitled to seek the advice of legal counsel with respect to any matter arising under this Agreement and the Escrow Agent shall have no liability and shall be fully protected with respect to any action taken or omitted pursuant to the advice of such legal counsel. The Depositor shall be liable for, and shall promptly pay, upon demand by the Escrow Agent, the reasonable and documented fees and expenses of any such legal counsel.

2.7. In the event of any disagreement between the parties to this Agreement, or between either of them and any other person or entity, resulting in adverse claims or demands being made in connection with the matters covered by this Agreement, or in the event that the Escrow Agent, in good faith, is in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not be or become liable in any way or to the Depositor or other person or entity for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to refrain from acting until (i) the rights of the parties to this Agreement and all other interested persons and entities shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been settled and all doubt resolved by agreement among all of the interested persons and entities, and the Escrow Agent shall have been notified thereof in writing signed by all such persons and entities. Notwithstanding the preceding, the Escrow Agent may in its discretion obey the order, judgment, decree or levy of any court, whether with or without jurisdiction, or of an agency of the United States or any political subdivision thereof, or of any agency of any State of the United States or of any political subdivision of any thereof, and the Escrow Agent is hereby authorized in its sole discretion to comply with and obey any such orders, judgments, decrees or levies. The rights of the Escrow Agent under this sub-paragraph are cumulative of all other rights which it may have by law or otherwise.

In the event of any disagreement or doubt, as described above, the Escrow Agent shall have the right, in addition to the rights described above and at the election of the Escrow Agent, to tender into the registry or custody of any court having jurisdiction, all funds and property held under this Agreement, and the Escrow Agent shall have the right to take such other legal action as may be appropriate or necessary, in the sole discretion of the Escrow Agent. Upon such tender, the Depositor agrees that the Escrow Agent shall be discharged from all further duties under this Agreement; provided, however, that any such action of the Escrow Agent shall not deprive the Escrow Agent of its

compensation and right to reimbursement of expenses hereunder arising prior to such action and discharge of the Escrow Agent of its duties hereunder.

2.8. The Depositor agrees to indemnify, defend and hold harmless the Escrow Agent and each of the Escrow Agent's officers, directors, agents and employees (the "Indemnified Parties") from and against any and all losses, liabilities, claims made by the Depositor or any other person or entity, damages, expenses and costs (including, without limitation, attorneys' fees and expenses) of every nature whatsoever (collectively, "Losses") which any such Indemnified Party may incur and which arise directly or indirectly from this Agreement or which arise directly or indirectly by virtue of the Escrow Agent's undertaking to serve as Escrow agent hereunder; provided, however, that no Indemnified Party shall be entitled to indemnity with respect to Losses that have been finally adjudicated by a court of competent jurisdiction to have been directly caused by such Indemnified Party's gross negligence or willful misconduct. The provisions of this section shall survive the termination of this Agreement and any resignation or removal of the Escrow Agent.

2.9. Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business of the Escrow Agent may be transferred, shall be the Escrow Agent under this Agreement without further act.

2.10. The Escrow Agent may resign at any time from its obligations under this Agreement by providing written notice to the Depositor. Such resignation shall be effective on the date set forth in such written notice, which shall be no earlier than thirty (30) days after such written notice has been furnished. In such event, the Depositor shall promptly appoint a successor Escrow agent. In the event no successor Escrow agent has been appointed on or prior to the date such resignation is to become effective, the Escrow Agent shall be entitled to tender into the custody of any court of competent jurisdiction all funds and other property then held by the Escrow Agent hereunder and the Escrow Agent shall thereupon be relieved of all further duties and obligations under this Agreement; provided, however, that any such action of the Escrow Agent shall not deprive the Escrow Agent of its compensation and right to reimbursement of expenses hereunder arising prior to such action and discharge of the Escrow Agent of its duties hereunder. The Escrow Agent shall have no responsibility for the appointment of a successor Escrow agent hereunder.

2.11. The Escrow Agent and any director, officer or employee of the Escrow Agent may become financially interested in any transaction in which the Depositor may be interested and may contract with and lend money to the Depositor and otherwise act as fully and freely as though it were not Escrow agent under this Agreement. Nothing herein shall preclude the Escrow Agent from acting in any other capacity for the Depositor.

III. Compensation of Escrow Agent

3.1. The Depositor agrees to pay to the Escrow Agent compensation, and to reimburse the Escrow Agent for costs and expenses, all in accordance with the provisions of **Exhibit B** hereto, which is incorporated herein by reference and made a part hereof. The fees agreed upon for the services rendered hereunder are intended as full compensation for the Escrow Agent's services as contemplated by this Agreement; provided, however, that in the event that the conditions for the disbursement of funds are not fulfilled, or the Escrow Agent renders any service not contemplated in this Agreement, or there is any assignment of interest in the subject matter of this Agreement or any material modification hereof, or if any dispute or controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Agreement or the subject matter hereof, then the Depositor agrees to compensate the Escrow Agent for such extraordinary services and to reimburse the Escrow Agent for all costs and expenses, including reasonable attorneys' fees and expenses, occasioned by any such event. In the event the Escrow Agent is authorized to make a distribution of funds pursuant to the terms of this Agreement, and fees or expenses are then due and payable to the Escrow Agent pursuant to the terms of this Agreement (including, without limitation, amounts owed under this Section 3.1 and Section 2.8), the Escrow Agent is authorized to offset and deduct such amounts due and payable to it from such distribution. The Escrow Agent shall have, and is hereby granted, a prior lien upon and first priority security interest in the Deposit Account and all funds held under this Agreement and all earnings and interest accrued thereon with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities and without judicial action to foreclose such lien and security interest, and the Escrow Agent shall have and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Deposit Account and the funds held under this Agreement and the earnings and interest accrued thereon. The provisions of this section shall survive the termination of this Agreement and any resignation or removal of the Escrow Agent.

IV. Miscellaneous

4.1. The Escrow Agent shall make no disbursement, investment or other use of funds deposited hereunder until and unless it has collected funds. The Escrow Agent shall not be liable for collection items until the proceeds of the same in actual cash have been received or the Federal Reserve has given the Escrow Agent credit for the funds.

4.2. The Escrow Agent shall invest all funds held pursuant to this Agreement in the Truist Institutional Money Market Deposit Option. The investments in the Truist Institutional Money Market Deposit Option are insured, subject to the applicable rules and regulations of the Federal Deposit Insurance Corporation (the "FDIC"), in the standard FDIC insurance amount of \$250,000, including principal and accrued interest, and are not secured. The Truist Institutional Money Market Deposit Option is more fully described in materials which have been furnished to the Depositor by the Escrow Agent, and the Depositor acknowledges receipt of such materials from the Escrow Agent.

Instructions to make any other investment must be in writing and signed by the Depositor. The Depositor recognizes and agrees that the Escrow Agent will not provide supervision, recommendations or advice relating to the investment of moneys held hereunder or the purchase, sale, retention or other disposition of any investment, and the Escrow Agent shall not be liable to the Depositor or any other person or entity for any loss incurred in connection with any such investment. The Escrow Agent is hereby authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Escrow Agent or any of its affiliates may receive compensation with respect to any investment directed hereunder including without limitation charging any applicable agency fee in connection with each transaction. The Escrow Agent shall use its best efforts to invest funds on a timely basis upon receipt of such funds; provided, however, that the Escrow Agent shall in no event be liable for compensation to the Depositor or other person or entity related to funds which are held un-invested or funds which are not invested timely. The Escrow Agent is authorized and directed to sell or redeem any investments as it deems necessary to make any payments or distributions required under this Agreement. Any investment earnings and income on the funds held hereunder shall be deposited in and become part of the Deposit Account and shall be disbursed in accordance with this Agreement.

4.3. The Escrow Agent shall provide monthly reports of transactions and holdings to the Depositor as of the end of each month, at the address provided by the Depositor in Section 4.5.

4.4. All interest and income from the investment of the funds shall be reported as having been earned by the Depositor as of the end of each calendar year whether or not such income was disbursed during such calendar year and to the extent required by the Internal Revenue Service. On or before the execution and delivery of this Agreement, the Depositor shall provide to the Escrow Agent a correct, duly completed, dated and executed current United States Internal Revenue Service Form W-9 or Form W-8, whichever is appropriate, or any successor forms thereto, in a form and substance satisfactory to the Escrow Agent including appropriate supporting documentation and/or any other form, document, and/or certificate required or reasonably requested by the Escrow Agent to validate the form provided. Notwithstanding anything to the contrary herein provided, except for the delivery and filing of tax information reporting forms required pursuant to the Internal Revenue Code of 1986, as amended, to be delivered and filed with the Internal Revenue Service by the Escrow Agent, as Escrow agent hereunder, the Escrow Agent shall have no duty to prepare or file any Federal or state tax report or return with respect to any funds held pursuant to this Agreement or any income earned thereon. With respect to the preparation, delivery and filing of such required tax information reporting forms and all matters pertaining to the reporting of earnings on funds held under this Agreement, the Escrow Agent shall be entitled to request and receive written instructions from the Depositor, and the Escrow Agent shall be entitled to rely conclusively and without further inquiry on such written instructions. The Depositor shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the funds held hereunder or any earnings or interest thereon unless such tax, late payment, interest, penalty or other cost or expense was finally adjudicated by a court of competent jurisdiction to have been directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided in this section is in addition to the indemnification provided to the Escrow Agent elsewhere in this Agreement and shall survive the resignation or removal of the Escrow Agent and the termination of this Agreement.

4.5. Any notice, request for consent, report, or any other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been given when delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) by electronic mail to the e-mail address given below, and written confirmation of receipt is obtained promptly after completion of the transmission, (iv) by overnight delivery by a reputable national overnight delivery service, or (v) by United States mail, postage prepaid, or by certified mail, return receipt requested and postage prepaid, in each case to the appropriate address set forth below or at such other address as either party hereto may have furnished to the other party hereto in writing:

If to Escrow Agent:

**Truist Bank
Attn: Corporate Trust and Escrow Services**

**919 East Main Street, 2nd Floor
Richmond, Virginia 23219**

**Client Manager: Emily Hare
Phone: 804-291-0317**

Email:Emily.Hare@Truist.com

If to Depositor:

**Nashville Zoo, Inc.
Attn: Finance Dept.
3777 Nolensville Pike
Nashville, TN 37211
E-mail: finance@nashvillezoo.org
[REDACTED]
Phone:615-833-1534**

Either party hereto may unilaterally designate a different address by giving notice of each change in the manner specified above to the other party hereto. Notwithstanding anything to the contrary herein provided, the Escrow Agent shall not be deemed to have received any notice, request, report or other communication hereunder prior to the Escrow Agent's actual receipt thereof.

4.6. This Agreement is being made in and is intended to be construed according to the laws of the State of North Carolina.

4.7. This Agreement is for the exclusive benefit of the Indemnified Parties and the parties hereto and their respective successors, heirs and permitted assigns, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy or claim to any other entity or person whatsoever. The terms of this Agreement may be altered, amended, modified or revoked only by an instrument in writing signed by all the parties hereto.

4.8. Except as permitted in Section 2.9, neither this Agreement nor any rights or obligations hereunder may be assigned by either party hereto without the express written consent of the other party hereto. This Agreement shall inure to and be binding upon the parties hereto and their respective successors, heirs and permitted assigns.

4.9. No party to this Agreement shall be liable to any other party hereto for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.

4.10. This Agreement shall terminate on the first to occur of (i) the date on which all of the funds and property held by the Escrow Agent under this Agreement have been disbursed. Upon the termination of this Agreement and the disbursement of all of the funds and property held hereunder, this Agreement shall be of no further effect except that the provisions of Sections 2.8, 3.1 and 4.4 shall survive such termination.

4.11. All titles and headings in this Agreement are intended solely for convenience of reference and shall in no way limit or otherwise affect the interpretation of any of the provisions hereof.

4.12. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

4.13. Contemporaneously with the execution and delivery of this Agreement and, if necessary, from time to time thereafter, the Depositor shall execute and deliver to the Escrow Agent a Certificate of Incumbency substantially in the form of Exhibit A hereto (a "Certificate of Incumbency") for the purpose of establishing the identity and authority of persons entitled to issue notices, instructions or directions to the Escrow Agent on behalf of the Depositor. Until such time as the Escrow Agent shall receive an amended Certificate of Incumbency replacing any Certificate of

Incumbency theretofore delivered to the Escrow Agent, the Escrow Agent shall be fully protected in relying, without further inquiry, on the most recent Certificate of Incumbency furnished to the Escrow Agent. Whenever this Agreement provides for written notices, written instructions or other actions to be delivered to the Escrow Agent, the Escrow Agent shall be fully protected in relying, without further inquiry, on any written notice, instructions or action executed by persons named in such Certificate of Incumbency.

Important Information about Opening a New Account at Truist Institutional Trust
To help the United States Government fight terrorism and money laundering, Federal law requires us to obtain, verify and record information that identifies each business or entity that opens an account or establishes a relationship. What this means for you: when you open an account or establish a relationship, we will ask for your business name, a street address and a tax identification number, that Federal law requires us to obtain. We appreciate your cooperation.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date and year first above written.

Truist Bank, as Escrow Agent
SIGNED by Emily Hare
on 11-18-2022 20:51:44 GMT
By: _____

Title: Emily Hare, Vice President

Nashville Zoo, Inc., as Depositor

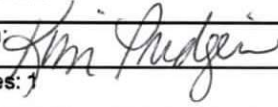
By: Kim Pridgen
Title: CFO


EXHIBIT A

Certificate of Incumbency

INDIVIDUAL(S) AUTHORIZED TO DIRECT TRUIST BANK AND SIGN DOCUMENTS ON BEHALF OF NASHVILLE ZOO, INC. ("CLIENT") WITH REGARD TO NASHVILLE ZOO PARKING GARAGE

Name: Kim Pridgen	Phone #1: 615.887.3605	Phone #2: 615.833.1534
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Title: CFO	Email #1: kpridgen@nashvillezoo.org	Email #2:
Sign: 	Fax:	Account View Access (Y/N):
Notes: 1	Notes:	Notes:

Name: Rick Schwartz	Phone #1: 615-289-9964	Phone #2: 615.833.1534
Title: CEO	Email #1: rschwartz@nashvillezoo.org	Email #2:
Sign: 	Fax:	Account View Access (Y/N):
Notes: 1	Notes:	Notes:

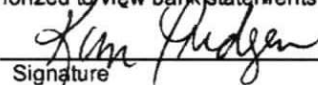
Name:	Phone #1:	Phone #2:
Title:	Email #1:	Email #2:
Sign:	Fax:	Account View Access (Y/N):
Notes: 1	Notes:	Notes:

INDIVIDUAL(S) AUTHORIZED TO RECEIVE ONLINE ACCESS - ONLY

Name: Sloan Jackson	Phone #1: 615.483.1629	Phone #2: 615.833.1534
Title: Controller	Email #1: sjackson@nashvillezoo.org	Email #2:
Sign:	Fax:	Account View Access (Y/N): Y
Notes:	Notes:	Notes:

NOTE	SPECIAL INSTRUCTIONS (e.g., Limitations of Authority)
1	Authorized to perform all Client actions contemplated under the governing documents.
2	
3	

The below undersigned individual hereby certifies: (i) to possess familiarity with documents and records that govern the above-referenced account and the operation and management of Client, (ii) to have the power and authority on behalf of Client to execute this Incumbency Certificate, and (iii) that the afore-referenced individuals (along with the undersigned, as noted) are duly authorized to instruct Truist Bank Corporate Trust on behalf of Client, and/or authorized to view bank statements regarding the above-referenced account.

Date: 11/11/22 By:  CFO
Signature Title

Truist Bank shall be entitled to rely upon any instructions from the individuals listed herein until notified in writing otherwise, or until termination of the above-referenced account. Client's failure to submit an updated Incumbency Certificate shall deem the Certificate of Incumbency (or similar signatory and/or Notices disclosure) on file as its Evergreen Incumbency Certificate and all current trust accounting access as approved. All current trust accounting access, including paper statements, online statements and online transaction review access, shall be approved, as applicable. Client shall promptly advise Truist Bank Corporate Trust and Escrow Services of any changes affecting this Incumbency Certificate.

EXHIBIT B

Truist Bank, as Escrow Agent

Schedule of Fees & Expenses

Administration Fee: [REDACTED] – payable at the time of signing the Escrow Agreement and on the anniversary date thereafter, if applicable

The Administration Fee includes providing routine and standard services of a Escrow. The fee includes administering the Escrow account, performing investment transactions, processing cash transactions (including wires and check processing), disbursing funds in accordance with the Agreement (note any pricing considerations below), and providing trust account statements to the Depositor for a twelve (12) month period. If the account remains open beyond the twelve (12) month term, the Depositor will be invoiced each year on the anniversary date of the execution of the Escrow Agreement. The Administration Fee is due upon execution of the Escrow Agreement. The fees shall be deemed earned in full upon receipt by the Escrow, and no portion shall be refundable for any reason, including without limitation, termination of the agreement.

Out-of-Pocket Expenses: At Cost

Out-of-pocket expenses such as, but not limited to, postage, courier, overnight mail, wire transfer, travel, legal (out-of-pocket to counsel) or accounting, will be billed at cost.

Note: This fee schedule is based on the assumption that the funds will be invested in one of the Truist Bank Deposit Options. If any other investment options are chosen, this fee schedule will become subject to change.

EXHIBIT C

[Insert Truist Wealth Management Wire Transfer Agreement]

PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into as of the 11 day of November, 2022, by and between The Metropolitan Government of Nashville and Davidson County ("Metro") and The Nashville Zoo Inc. ("Zoo").

WHEREAS, Metro and Zoo are parties to a Lease Agreement approved by O96-473 for property commonly known as Grasmere (the "Lease") for certain premises located at 3777 Nolensville Pike, Nashville, Tennessee (the "Premises") as more particularly described in the Lease; and,

WHEREAS, The Metropolitan Government FY 2021-22 Capital Spending Plan allocated \$15 million dollars to contribute toward a facility parking garage ("Improvements") serving the Zoo; and,

WHEREAS, The Zoo wishes to donate the property to the Metropolitan Government via quitclaim in which the Improvements will be constructed; and,

WHEREAS, pursuant to the terms of the Agreement, Zoo has proposed to build the Improvements, all in accordance with the plans to be approved by the Metropolitan Department of Parks and Recreation, in exchange for a payment from Metro not to exceed \$15 million dollars and conveying the Improvements to Metro upon completion; and,

WHEREAS, the Lease will be amended to reflect the Improvements.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Plans. On or before 11/21/22, Zoo will provide to Metro final construction plans ("Plans") for the Parking Garage contemplated by this Agreement. Metro shall have 30 days to review the Plans and approve them or notify Zoo of any material deviation from schematic drawings previously approved by Metro, which deviations Zoo shall promptly correct.
2. The Work. Zoo agrees to complete fully all Improvements depicted on the Plans or reasonably inferable therefrom (the "Work"). All Work shall be completed in a good and workmanlike manner using commercially reasonable acceptable materials. Metro shall have the right to inspect the Work at all reasonable times and to reject Work that is defective or not in full compliance with the Plans (Work that is defective or not in compliance with the Plans being "Unacceptable Work") All Work shall be completed by November 2022 (the "Completion Date"), subject to reasonable extension on account of (i) force majeure or, (ii) material delays caused by Metro's unjustified failure to approve the Plans or issue necessary permits.
3. Rejection of Defective Work. Metro shall notify Zoo of any Unacceptable Work within 7 days after such Unacceptable Work is performed, and Zoo shall promptly make such corrections as are necessary to remedy the defects or material deviations from the Plans.
4. Changes. Metro may order changes in the Work and shall bear the additional costs incurred in the performance of such Work, if any. Zoo may request changes in the Work, which Metro shall consider in good faith. Zoo shall bear any increase in cost of the Work associated with any such change requested by Zoo and approved by Metro. Any change in the Work, and all other modifications of this Agreement shall be in writing and signed by authorized representatives of

both Parties. The Completion Date shall be subject to adjustment based on changes required or approved by Metro.

5. Payment. Metro agrees to pay Zoo a total of Fifteen Million Dollars (\$15,000,000.00). In no event, shall Metro's contribution toward the Improvements exceed \$15,000,000.00. Payments shall be made by Metro to Zoo in monthly installments based on the percentage of Work substantially completed. Zoo shall submit properly documented payment applications each month, certifying in each instance that the Work for which payment is sought is complete in accordance with the Plans. Metro shall use best efforts to make payment required by this Paragraph within 20 days after receipt of any acceptable payment application. Zoo shall not be entitled to any payment that would cause the percentage of the total build cost reflected in Zoo's construction contract with its general contractor (the "Contract Sum") paid to exceed the percentage of Work completed. Zoo shall bear all costs of performing the Work that exceeds the Contract Sum.

6. Termination. In the event Zoo fails to complete the Work by the Completion Date, as it may be extended pursuant to Paragraph 2, Metro shall have the right to terminate this Agreement upon 60 days' written notice. In such event, Zoo shall be entitled to payment of the lesser of: (1) the reasonable value of Work successfully completed as of the date of termination and (2) the amount by which the portion of the Contract Sum unpaid at the time of termination exceeds Metro's reasonable cost incurred in completing the Work by other means.

7. Escrow Account. To secure Zoo's obligations under this Agreement and to comply with T.C.A. § 12-4-201, Zoo shall deposit an amount equal to 25% of the Contract Sum in an interest-bearing account (the "Escrow Account") with a financial institution selected by the Zoo and approved by Metro for the purpose of acting as an escrow agent (the "Escrow Holder"). Zoo shall enter into a separate Escrow Agreement with the Escrow Holder pursuant to the terms and in the form attached hereto as Exhibit A (the "Escrow Agreement"). The funds in Escrow shall be held and disbursed as set forth in the Escrow Agreement. Zoo's instructions to Escrow Holder shall comply with Sections 8 and 9 of this Agreement.

8. Notices of Nonpayment. The following procedure shall apply to every notice of nonpayment received by Metro, Zoo, or Zoo's general contractor by a remote contractor, material supplier, or laborer performing work or providing materials in relation to the Work, where such notice is served on Metro, Zoo, or Zoo's general contractor within ninety (90) days of the last day of each month within which work or labor was provided or materials, services, equipment, or machinery furnished ("Notice of Nonpayment"). Notice of Nonpayment shall provide the following information:

- (1) The name of the remote contractor and the address to which Zoo and Zoo's general contractor in contractual relation with the claimant may send communications to the claimant;
- (2) A general description of the work, labor, materials, services, equipment, or machinery provided;
- (3) The amount owed as of the date of the notice; and
- (4) A statement of the last date the claimant performed work and/or provided labor or materials, services, equipment, or machinery in connection with the improvements.

Notice of this procedure shall be provided to all remote contractors for the Work through the notice attached hereto as Exhibit B, which Zoo shall instruct its general contractor to provide to each remote contractor and material supplier performing Work or furnishing materials for the Work. A copy of the notice shall also be posted prominently on the jobsite.

(a) Metro shall forward to Zoo any Notices of Nonpayment it receives. Upon receipt of a Notice of Nonpayment, whether received from Metro or directly served on the Zoo by a claimant, Zoo shall forward a copy of the Notice of Nonpayment to its general contractor for the Work.

(b) If the payment claim asserted in a Notice of Nonpayment is not paid or resolved within thirty (30) days of service of the Notice of Nonpayment on Zoo, Zoo shall send a notice to Metro, with copy to the Escrow Holder, that the dollar value of the payment claim asserted in the Notice of Nonpayment is in dispute and funds sufficient to resolve the payment claim will only be released from the Escrow Account pursuant to the terms of this Agreement.

(c) Once a payment claim subject to subsection (b) above has been paid or resolved, Zoo shall provide notice to Metro, with a copy to Escrow Holder, that such funds are no longer in dispute and can be released at the appropriate time pursuant to Section 9 of this Agreement. Notice to Metro pursuant to this subsection shall either (i) bear the signature of the claimant for the relevant Notice of Nonpayment reflecting that the payment claim has been resolved or (ii) be accompanied by a final, nonappealable Court order resolving the payment claim.

(d) For any payment claim for which Zoo received a Notice of Nonpayment that remains unpaid and/or unresolved and on which no legal action has been initiated more than ninety (90) days after substantial completion of the Work, Zoo may, consistent with the demand described in Tenn. Code Ann. § 66-11-130, send a demand to the remote contractor that served the Notice of Nonpayment that such remote contractor initiate legal action to proceed on its claim for payment against the Zoo within one hundred (100) days after service of the demand or any claim to recover against any funds in the Escrow Account shall be forfeited. If no legal action is initiated within that time period, Zoo shall notify Metro, with a copy to Escrow Holder, identifying the payments claims for which no legal action has been filed. For avoidance of doubt, no claim of nonpayment shall be deemed untimely if suit thereon is filed within six months after substantial completion of the Work.

9. Termination of Escrow Account. Upon completion of 75% of the Work, measured by payment by the Zoo of 75% of the Contract Sum to the general contractor and the receipt by Zoo of claim waivers from every remote contractor and material supplier having furnished labor or materials to the project demonstrating that such payments have been received by such remote contractors and material suppliers, the funds held in the Escrow Account, including accrued interest to date, shall be paid in full to the Zoo, less \$500,000 and any amount remaining in dispute pursuant to Section 8 of this Agreement. Upon substantial completion of the Work, all remaining funds in the Escrow Account, including accrued interest shall be paid in full to the Zoo, less any amount still remaining in dispute pursuant to Section 8 of this Agreement. The Escrow Account may terminate in its entirety, with all funds released to Zoo or as otherwise directed, when all payment claims subject to Notices of Nonpayment are resolved pursuant to Section 8(c) or 8(d) of this Agreement.

10. Insurance. At all times while any portion of the Work is underway and while Zoo or its successors in interest or assignees are responsible for any obligations under this Agreement, Zoo shall obtain and maintain, or cause to be obtained and maintained, policies of general commercial and automobile liability insurance, naming Metro as an additional insured and have policy limits of at least \$2,000,000. Zoo shall also obtain and maintain or cause its contractor to obtain and maintain throughout construction of the Work, a policy of builder's risk insurance covering the full replacement value of all completed Work. After the Work is completed, post Completion Date,

Zoo shall maintain insurance on the Improvements as set forth in Section 19 of the Lease Agreement. The Zoo shall not proceed with the Work under this Agreement until satisfactory proof of insurance under this Paragraph has been provided to and approved by Metro.

11. Property Not To Be Used As Security. Zoo shall not permit the site (the "Property") where the Work is to be performed to be used as security for any debt. In the event any lien is filed against the Property, Zoo shall promptly cause the removal of such lien by bond or otherwise.

12. Indemnity. Zoo agrees to indemnify Metro and its employees, officers and agents against all costs, claims and causes of action, including without limitation, reasonable attorney fees, arising from or relating to Zoo's performance under this Agreement. Zoo and Metro acknowledge that upon completion of the Work, Zoo indemnity obligation will continue pursuant to Section 20 of the Lease Agreement.

13. Transfer/Ownership of Improvements. Upon completion of the Improvements, and upon approval by Metro, Zoo will convey ownership of all Improvements to Metro at no cost.

14. Maintenance of Improvements. Upon completion of the Improvements, Zoo shall be responsible, at its sole cost and expense, for all management and operation of the Improvements, including but not limited to, maintenance and repair as needed to keep the Improvements in good working order and condition, including, without limitation, pothole repair, lighting the parking lot, maintenance of the lighting system, as well as regular commercially appropriate sweeping, snow and ice removal.

15. Duty to Repair. Zoo agrees to repair or replace any Work found to be defective after the completion of the Improvements through the duration of the Lease.

16. Parking Garage Revenue. Zoo is entitled to receive, collect and retain all revenue generated from the Improvements throughout the term of the Lease.

17. Merger, Venue, Choice of Law. This Agreement contains all the understandings of the parties with respect to the Work. The exclusive forum of any dispute arising from this Agreement shall be the Chancery or Circuit Court of Davidson County, Tennessee, and the laws of Tennessee shall apply.

18. Assignment. Zoo may not assign this Agreement without Metro's written consent.

19. Notices. Notices required under this Agreement shall be sent as appropriate as follows:

Monique Horton Odom, Director
Metropolitan Department of Parks and Recreation
511 Oman Street
Nashville, TN 37203

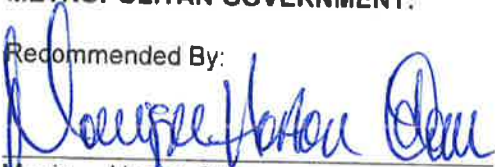
Nashville Zoo, Inc.
ATTN: Finance Dept.
3777 Nolensville Pike
Nashville, TN 37211

20. Anti-Israel Boycott. In accordance with Tennessee Code Annotated Title 12, Chapter 4, Part 1, Zoo certifies that Zoo is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel.

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed by their duly authorized officers on the day and year first above written.

METROPOLITAN GOVERNMENT:

Recommended By:



Monique Horton Odom, Director
Metropolitan Department of Parks
and Recreation

THE NASHVILLE ZOO, INC

By

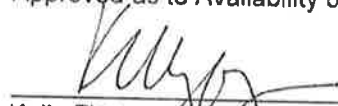


Name: Rick Schwartz

Title: CEO

Abraham Wescott _____

Approved as to Availability of Funds:


Kelly Flannery, Director
Metropolitan Department of Finance *tje*

Approved as to Form and Legality:

Tara M. Ladd
Metropolitan Department of Law

PARTICIPATION AGREEMENT EXHIBIT B
NOTICE OF CLAIM FOR LABOR OR MATERIALS

The property located at 3777 Nolensville Pike, Nashville, TN 37211 is owned by Metropolitan Government of Nashville & Davidson County (“Nashville”). An escrow account will be maintained in compliance with Tenn. Code Ann. § 12-4-201. In order to secure the advantage of this escrow account in relation to a claim for nonpayment relating to work or materials provided, a furnisher of labor or material on this jobsite must comply with the following:

Such furnisher of labor or material, or such laborer, shall within ninety (90) days of the last day of each month within which work or labor was provided or materials, services, equipment, or machinery furnished, give written notice by return receipt certified mail, or by personal delivery, either to the general contractor, to Nashville Zoo, Inc. (“Zoo”), or to Metro’s Director of the Department of Parks and Recreation, with a copy to the Director of Law for Metro, or the Mayor of Nashville (“Notice of Nonpayment”).

The Notice of Nonpayment shall provide the following information:

- (1) The name of the remote contractor and the address to which Zoo and Zoo’s general contractor in contractual relation with the claimant may send communications to the claimant;
- (2) A general description of the work, labor, materials, services, equipment, or machinery provided;
- (3) The amount owed as of the date of the notice; and
- (4) A statement of the last date the claimant performed work and/or provided labor or materials, services, equipment, or machinery in connection with the improvements.



**METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY**

Metro Office Building
800 President Ronald Reagan Way
P.O. Box 196300
Nashville, TN 37219-6300

November 30, 2022

To: Tara Ladd Metro Legal Department

**Re: NASHVILLE ZOO PARKING GARAGE
Planning Commission Mandatory Referral #2022M-050AG-001
Council District #26 Courtney Johnston, Council Member**

On behalf of the Metropolitan Planning Commission, the following item, referred to the Commission as required by the Metro Charter, has been recommended for *approval* to the Metropolitan Council:

An ordinance approving the Fourth Amendment to the Lease Agreement between The Metropolitan Government of Nashville and Davidson County and The Nashville Zoo, Inc., approving the conveyance of property from the Nashville Zoo, Inc. via quitclaim to the Metropolitan Government of Nashville and Davidson County and approving a participation agreement between the Metropolitan Government of Nashville and Davidson County and The Nashville Zoo, Inc. for the construction of a facility Parking Garage. (Proposal No. 2022M-050AG-001).

The relevant Metro agencies (Metro Parks, Metro Public Works, Metro Water Services, Metro Emergency Communications, the Nashville Electric Service, Metro Finance – Public Property and the Metro Historical Commission) have reviewed the proposal and concur in the recommendation for approval. This request must be approved by the Metro Council to become effective. A sketch showing the location of the request is attached to this letter.

Conditions that apply to this approval: Property is a Historic Landmark Zoning Overlay District. Project must follow all conditions outlined by the Historical Commission (MHZC) Permit.

This recommendation for approval is given as set forth in the Metropolitan Planning Commission Rules and Procedures. If you have any questions about this matter, please contact Delilah Rhodes at delilah.rhodes@nashville.gov or 615-862-7208.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lisa Milligan'.

Lisa Milligan
Land Development Manager
Metro Planning Department
cc: Metro Clerk