

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this "Agreement") by and between THE CITY OF CLEVELAND HEIGHTS, an Ohio municipal corporation ("Seller"), and TWG DEVELOPMENT, LLC, an Indiana limited liability company or its assigns as may be permitted pursuant to Section 17(d) hereof ("Purchaser"); ("Seller and "Purchaser together being known as the "Parties") is made and entered into to be effective as of the date signed by the latter of Seller or Purchaser.

For and in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. Purchase and Sale. Upon and subject to the terms of this Agreement, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all of the property (the "Property") described in Exhibit A to this Agreement.

2. Purchase Price. The price for which Seller shall sell, convey and assign the Property to Purchaser, and which Purchaser shall pay to Seller, is Two Hundred Forty-Five Thousand and 00/100 Dollars (\$245,000.00) ("Purchase Price"). The balance of the Purchase Price (Purchase Price less \$10,000 Earnest Money paid as specified in Section 4 below) shall be payable in cash or other immediately available funds at Closing as set forth in Section 9 below.

3. Tax Credit Award. The Parties acknowledge and agree that the Sale of this Property is contingent upon two events:

- a) Purchaser being awarded tax credits from the State of Ohio for the creation of low/moderate income housing ("Tax Credits"); and
- b) The Parties thereafter executing a Development Agreement satisfactory to both Parties.

Purchaser shall be required to apply for the Tax Credits by the State deadlines in February, and shall notify Seller in writing or by e-mail within five business days after it receives notice from the State as to whether it has been awarded said Tax Credits. The date Purchaser notifies Seller that it has been awarded said Tax Credits shall be identified herein as the "Tax Credit Notification Day" and shall commence the time frames for further actions under Section (9) of this Agreement.

4. Title Work.

a. Within twenty (20) days after the Tax Credit Notification Date, Seller shall, at Seller's cost, deliver or cause to be delivered the following items to Purchaser: (i) a Commitment (the "Commitment") for the Title Policy (hereinafter defined) issued by a title company acceptable to both parties ("Title Company"), covering the Property; and (ii) copies of all exception documents referenced therein (the "Exception Documents"). Prior to closing, Purchaser, at Purchaser's option and sole cost, may obtain an updated survey of the Property prepared by a registered, professional land surveyor and dated (or updated) not earlier than the Effective Date (the "Updated Survey," sometimes referred to herein as the "Survey").

b. Purchaser shall have ten days after delivery by Seller of the items identified in Subsection 4(a) to deliver to Seller in writing a specific list of any objections to the Commitment and the Exception Documents (all such objections to be delivered in a single written notice from Purchaser to Seller within such period). Any item constituting an encumbrance upon or adversely affecting title to the Property (as reflected by the Commitment) which is not objected to by Purchaser in writing within the permitted time shall be deemed approved by Purchaser and shall constitute an exception to title (the "Permitted Exceptions"). If objections are made by Purchaser within the time permitted, Seller shall have the right, but not the obligation, to cure such objections. In the event that Seller is unable or unwilling to cure any such objections prior to the Closing Date (hereinafter defined), then Purchaser may, at its option, and as its sole and exclusive remedy, by written notice to Seller and the Title Company given within five (5) business days after written notice from Seller that Seller is unable or unwilling to cure any such objections either (i) terminate this Agreement (whereupon the Earnest Money and all interest thereon shall be returned to Purchaser) and the parties hereto shall have no further obligation one to the other except for the obligations of Purchaser contained in Section 10; or (ii) waive any such objections and the transaction contemplated hereby shall be consummated as provided herein with such uncured objections being deemed additional Permitted Exceptions. Purchaser's failure to give such written notice within such five (5) business day period shall be deemed an election to waive such objections. The date by which Purchaser is required to give Seller notice of its intent not to proceed with the purchase shall be known as the "Due Diligence Expiration Date"

c. At the Closing, Seller shall cause the Title Company to deliver (or commit to deliver as soon as possible after Closing if such cannot be delivered at Closing) to Purchaser an Owner's Title Insurance Policy (the "Title Policy") dated the date of Closing, in the amount of the Purchase Price and insuring indefeasible, see simple title to the Property to be in Purchaser, subject to no exceptions other than Permitted Exceptions. The Title Policy shall be on the standard form in use in the State of Ohio. Purchaser shall pay for any title charge associated with any additional endorsements and charges associated with Lender's requirements including but not limited to the costs of any endorsements required by Lender.

d. It is acknowledged that Seller does not have a Survey of the Property, and that any survey desired by Purchaser shall be obtained by Purchaser at Purchaser's expense within thirty (30) days after the Tax Credit Notification Day. The Parties acknowledge that they have previously signed a Right of Entry to permit Purchaser access to the Property for any testing and/or survey work desired by Purchaser.

5. Earnest Money.

a. Within five (5) business days after execution of this Agreement by Seller and Purchaser, Purchaser shall deliver to the Title Company cash or immediately available funds in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) as earnest money (the “Original Earnest Money”).

b. In the event the Closing shall be consummated, the Earnest Money shall be credited against the Purchase Price due at Closing. In all other events, the Earnest Money shall be held and disbursed by the Title Company strictly in accordance with the terms and provisions of this Agreement. In the event that Purchaser terminates this Agreement in accordance with Section 4(b) hereof, the Earnest Money and all interest earned thereon shall be forthwith returned by the Title Company to Purchaser.

6. Purchaser’s Representations and Warranties. Purchaser represents and warrants to Seller that Purchaser has all requisite power and authority to execute, deliver, enter into and perform its duties and obligations under this Agreement; and that neither the execution nor the delivery of this Agreement, the consummation of the sale and purchase contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof conflict with or will result in the breach of any of the terms, conditions or provisions of any agreement or instrument to which the Purchaser is a party or by which Purchaser is bound.

7. Seller’s Representations and Warranties. Seller represents and warrants to Purchaser that Seller has all requisite authority to enter into this Agreement, to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder. Seller has obtained all necessary authorizations required in connection with the execution, delivery and performance contemplated by this Agreement.

Each of the above said warranties and representations is true and correct as of the date hereof and shall be true and correct on the Closing Date. The above warranties and representations shall survive the Closing for a period of one (1) year.

8. Certain Covenants and Agreements; Contingencies. If Purchaser notifies Seller that it does not desire to purchase the Property after ten (10) days of the Tax Credit Award announcement by the Ohio Housing Finance Authority, the Earnest Money shall be returned by the Title Company to Purchaser, whereupon neither party shall have any further obligations to the other under this Agreement (except Purchaser’s obligations under Section 10 of this Agreement). If Purchaser fails to notify Seller of its election to terminate this Agreement prior to the expiration of the Due Diligence Period, Purchaser shall be conclusively deemed to have approved the Property in all respects, Purchaser shall have no right to terminate this Agreement pursuant to the terms of this Section , and the entirety of the Earnest Money and interest earned thereon shall be credited against the Purchase Price or retained by Seller in the event the Parties are unable to negotiate a mutually-acceptable Development Agreement

9. Development Agreement

The Parties shall have one hundred eighty (180) days from the Due Diligence Expiration Date to negotiate a Development Agreement for the construction of a multi-family residence on the Property. In the event the Parties are unable in good faith to negotiate such a Development Agreement, Seller shall not be required to sell and Purchaser shall not be required to purchase the Property.

The execution of a Development Agreement shall not exempt Purchaser from the normal building, fire and zoning code processes and board approvals, and Seller makes no warranties with respect to said required approvals.

10. Inspections.

Prior to the Due Diligence Expiration Date, Seller agrees that Purchaser and its engineers, consultants, accountants, and agents, at Purchaser's sole cost and risk, shall have the right to go on the Property, or any part thereof at all reasonable times, to inspect the Property and to make all such other inspections, surveys, tests and/or market or other studies as Purchaser deems necessary or desirable to determine if the Property is suitable for use by Purchaser. Prior to any physical testing of the property for environmental issues including, but not limited to, a Phase II Environmental Assessment, Purchaser shall give Seller not less than ten (10) business days' notice including a summary of the proposed testing and its scope. Purchaser shall keep the results of such physical testing and any reports prepared in connection with same strictly confidential and shall not disclose such results to any third party except as may be required by law or in order to obtain financing for Purchaser's proposed use for the Property. Purchaser will indemnify, defend and hold harmless Seller from all liability, claims, loss, cost, expense and damage, including attorneys' fees and expenses, arising out of, and will repair any damages resulting to the Property due to, such tests, surveys, inspections and studies or, if requested by Seller, reimburse Seller for all expenses incurred by Seller in repairing such damages if Purchaser does not promptly repair such damages. The foregoing agreement of indemnity, repair and reimbursement shall survive Closing and/or any termination of this Agreement.

11. Closing.

a. References in this Agreement to the "Closing" shall refer to the actual consummation of the transactions contemplated hereby. References in this Agreement to the "Closing Date" shall refer to the actual date upon which Closing occurs. The Closing shall take place at the office of the Title Company or such other place as may be mutually designated by Seller and Purchaser on the date that is the ten days the execution by both Parties of a Development Agreement. Purchaser shall have the option to extend the Closing Date for a period of sixty (60) days by giving written notice to Seller and the Title Company not later than five (5) business days prior to the Closing Date, and in consideration therefor and as a condition to such extension, Purchaser shall deposit concurrently with the giving of the written notice an additional, non-refundable Earnest Money Deposit of Twenty-Five Thousand Dollars (\$25,000).

b. At the Closing, Seller shall deliver to Purchaser each of the following (all documents for the transfer and conveyance of the Property to Purchaser being hereinafter collectively referred to herein as the “Transfer Documents”);

- i. a duly executed Quit Claim Deed (the “Deed”) conveying the Property to Purchaser subject only to the Permitted Exceptions;
- ii the Title Policy (or, if not available, a pro forma of the Title Policy approved by Purchaser’s counsel);
- iii. possession of the Property;

c. At the Closing, Purchaser shall deliver to the Escrow Agent the balance of the Purchase Price and, in addition deliver to Seller such documents as are necessary and appropriate in the consummation of this transaction and any documents reasonably required by the Title Company to consummate the Closing or by Seller to evidence Purchaser’s authority to enter into and consummate the Closing of this Agreement.

d. The following shall be prorated and adjusted as of the Closing Date:

Ad valorem and similar taxes and assessments relating to the Property, if any, shall be prorated between Seller and Purchaser as of the Closing Date, provided that if the Closing shall occur before the tax duplicate is final for the then current year, the apportionment of taxes shall be upon the basis of the tax rate of the preceding year applied to the latest assessed valuation.

The agreements of Seller and Purchaser set forth in this Section shall survive the Closing.

e. Seller shall be responsible for and pay (i) one-half the cost of the premium for the Title Policy; and (ii) one-half of any escrow fees. Purchaser shall be responsible for and pay (i) one-half of any escrow fees; (ii) recording fees, (iii) one-half of the premium for the Title Policy; and (iii) the cost of any endorsements or other modifications required or desired by Purchaser, or by Lender, to the Title Policy. Each party shall be responsible for paying any other fees, costs, and expenses identified in this Agreement as being the responsibility of such party. Each party is responsible for paying its respective attorneys’ fees incurred in negotiating, preparing, and closing the transaction contemplated by this Agreement. This Paragraph. shall survive any termination of this Agreement.

f. The obligation of Purchaser to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

- (i) Seller shall have delivered to Purchaser all of the items required to be delivered to Purchaser pursuant to the terms of this Agreement. If Purchaser is aware that it has not received any required delivery, Purchaser shall provide notice of such deficiency three (3) days prior to expiration of the Due Diligence Period.
- (ii) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date and Purchaser shall have waived or be deemed to have waived the Inspection and Financing Contingencies.
- (iii) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date.
- (iv) The Parties shall have entered into and executed a mutually-satisfactory Development Agreement.

g. The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

- (i) Seller shall have received the Purchase Price as adjusted pursuant to and payable in the manner provided for in this Agreement.
- (ii) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date (with appropriate modifications permitted under this Agreement).
- (iii) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the Closing Date.
- (iv) The Parties shall have entered into a mutually-satisfactory Development Agreement for the Property. Purchaser shall be obligated, and hereby covenants and agrees, to commence negotiation of the Development Agreement not later than the expiration of the Due Diligence Period unless Purchase desires to accelerate the Closing Date, in which event negotiation of the Development Agreement shall commence not later than ninety (90) days prior to the accelerated Closing Date.

12. Purchaser's Default. If the sale contemplated by this Agreement is not consummated by reason of Purchaser's breach or other failure to perform all obligations and

conditions to be performed by Purchaser under this Agreement, Seller, as its sole and exclusive remedy, shall have the right to terminate this Agreement and promptly to receive the Earnest Money as liquidated damages for the breach of this Agreement. The Title Company shall not be required to obtain a written release or mutual consent to the release of the Earnest Money in such event.

13. Commission. Seller and Purchaser mutually represent and warrant that no real estate commission, finders' or brokers' fee has been or will be incurred in connection with this Agreement, and each Party shall be responsible for any loss or damage caused by said Party's breach of this provision. The agreements of Seller and Purchaser in this Section 13 shall survive the Closing and any termination of this Agreement.

14. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to be delivered when actually received if personally delivered or sent by recognized overnight delivery service addressed to Seller or Purchaser, as the case may be, as follows:

If to Seller:

City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio 44118
Attention: Director of Law

If to Purchaser:

TWG Development, LLC
333 N. Pennsylvania Street, Suite 100
Indianapolis, Indiana 46204
Attention: _____

Either party hereto may change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address.

15. Destruction Prior to Closing. The Property is vacant land. Risk of loss shall remain with Seller until Closing, but Purchaser shall have no right of termination of this Agreement due to damage to the vacant land.

16. As Is, Where Is Condition of the Property. Purchaser is purchasing the Property in its AS IS, WHERE IS condition with all faults, defects, and deficiencies of whatever kind or nature may now or hereafter exist. Seller makes no representations or warranties whatsoever in connection with the Property, and hereby disclaims all such warranties. Purchaser agrees that it has been given ample opportunity to inspect the Property and review its condition, and the right to terminate this Agreement as hereinabove described if it is dissatisfied with the condition of the Property or its suitability for Purchaser's use.

17. Miscellaneous.

a. Construction and Interpretation. This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio. The parties hereto each acknowledge and agree that they and, if they so choose, their attorneys have reviewed and revised this Agreement and that the normal rule of construction that any ambiguities are to be resolved and construed against the drafting party shall not be employed in the interpretation of this Agreement.

b. Amendment and Waiver. This Agreement may not be modified or amended, except by an agreement in writing signed by Seller and Purchaser. Seller or Purchaser may waive any of the conditions contained herein or any of the obligations of the other party hereunder but any such waiver shall be effective only if in writing and signed by the party waiving such condition or obligation.

c. Power to Execute. Each person executing this Agreement, by his or her execution hereof, represents and warrants that they are fully authorized to do so, and that no further action or consent on the part of the party for whom they are acting is required for the effectiveness or enforceability of this Agreement against such party following such execution.

d. Assignment. With the consent of Seller, not to be unreasonably withheld, Purchaser shall have the right and authority to assign this Agreement and all of its rights hereunder to an affiliate of Purchaser. Notwithstanding such assignment, the original Purchaser hereunder shall remain liable for performance of all obligations of Purchaser hereunder.

e. Binding Terms. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their legal representatives, successors and permitted assigns as described herein.

f. Entire Agreement. This Agreement (including any exhibits and/or addenda hereto), constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No covenant, representation or condition which is not expressed herein shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

g. Acknowledgment of Cancellation. Upon a termination or cancellation of this Agreement, both parties covenant and agree to execute such documents as either party may reasonably request to evidence such termination.

h. Time. The parties hereto hereby agree that time shall be of the essence with respect to the performance of this Agreement.

i. Counterparts. This Agreement may be executed in any number of counterparts, and it shall not be necessary that the signatures of all parties hereto be contained on any one

counterpart hereof. Each counterpart shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument.

j. Survival of Covenants. To the extent herein expressly provided, and only to such extent, the covenants, representations and warranties contained herein shall survive and be enforceable after the Closing, shall not be merged into the documents executed at Closing and shall not be affected by any investigation, verification or approval by any party hereto or by anyone acting on behalf of any party hereto.

k. Dates. If any date or deadline for performance or giving any notice pursuant to the terms of this Agreement fall on a weekend or holiday recognized by banks in the State of Ohio, then the date or deadline for such performance or giving of notice shall be on the following business day. When used herein, the term "business day" shall mean Monday through Friday only, but excluding the following holidays: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and any day on which the federal wire transfer system does not operate.

18. CONFIDENTIALITY

Seller and Purchaser hereby covenant and agree that, at all times after the date hereof and after the Closing, unless consented to in writing by the other party, no press release or other public disclosure concerning this transaction shall be made, and each party agrees to use its good faith and commercially reasonable efforts to prevent disclosure of this transaction and information obtained in connection herewith. The provisions of this Section 17 shall survive the execution and delivery of the closing documents and shall not be merged therein. Notwithstanding the foregoing, Purchaser acknowledges that, as a municipal corporation, Seller shall be obligated to make public the form and substance of this Agreement and to obtain the approval for entering into this Agreement from the Mayor and the City Council of Seller. Purchaser acknowledges that it is aware that Seller is subject to the Ohio Public Records Act, ORC 149.43

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the latter of the two dates upon which this Agreement is executed by Seller and Purchaser as indicated below (the "Effective Date").

PURCHASER:

TWG DEVELOPMENT, LLC

By: 

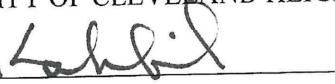
Name: Alex Frazier

Title: Development Director

Date of Execution: 1/19/23

SELLER:

THE CITY OF CLEVELAND HEIGHTS

By: 

Name: Khalil Seren

Title: Mayor

Date of Execution: 1/20/2023

APPROVED AS TO LEGAL FORM

William R. Haase
DIRECTOR OF LAW
CITY OF CLEVELAND HEIGHTS, OHIO

JOINDER BY TITLE COMPANY

Title Company has executed this Agreement in order to confirm that Title Company has received the Earnest Money required to be deposited under this Agreement, and shall hold it and the interest earned thereon in escrow, and shall disburse the Earnest Money and the interest earned thereon pursuant to the provisions of this Agreement.

Date executed by Title Company:

_____ , 20____

By: _____
Name: _____
Title: _____