



November 13, 2023
Special Meeting
8:30 PM

Cleveland Heights City Hall
Council Chambers
40 Severance Cir
Cleveland Heights, Ohio

AGENDA - CLEVELAND HEIGHTS CITY COUNCIL MEETING

- 1) Meeting called to order by Council President
- 2) Roll Call of Council Members
- 3) Excuse absent members
- 4) Amendments to the Agenda (if necessary)
- 5) LEGISLATION

Note: The title for each piece of legislation contains a parenthetical reference to the Council Committee within which the subject matter of the legislation falls. Council Committees are abbreviated as follows: (AS)-Administrative Services; (COTW)-Committee of the Whole; (CRR)-Community Relations and Recreation; (F)-Finance; (HB)-Housing and Building; (MSES)-Municipal Services and Environmental Sustainability; (PD)-Planning and Development; (PSH)-Public Safety and Health. See Resolution 97-2022 for a list of Council Committee subject matter areas.

a. First Readings - Consideration of Adoption Requested

ORDINANCE NO. 182-2023(COTW): First Reading. An Ordinance authorizing and directing the Mayor to execute an engagement letter with the law firm of McDonald Hopkins for the provision of legal services to assist and advise the City's Charter Review Commission; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by President Hart
Move for Adoption

b. First Readings Only

RESOLUTION NO. 183-2023(MSES): First Reading. A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the Member Community

Infrastructure Grant Program for the design control of SSO CH-30; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

RESOLUTION NO. 184-2023(MSES): First Reading. A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the Member Community Infrastructure Grant Program for the Hampshire Road Illicit Connections and SSO Control Project; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

c. Second Readings

ORDINANCE NO. 178-2023(PD): Second Reading. An Ordinance authorizing the Mayor to execute an agreement for the sale of certain real property located at 1900-1910 South Taylor Road, 1912-1926 South Taylor Road, and 1932-1946 South Taylor Road, Permanent Parcels No. 684-27-001, 684-26-011, and 684-26-012; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

Move for Adoption

ORDINANCE NO. 181-2023(PD): Second Reading. An Ordinance authorizing the Mayor to execute a second amendment to an agreement for the sale of certain real property located at 2228 Noble Road (primary address) consisting of several contiguous parcels; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Councilmember Mattox

Move for Adoption

6) Adjournment

NEXT MEETING OF COUNCIL: NOVEMBER 20, 2023

Proposed: 11/13/2023

ORDINANCE NO. 182-2023(COTW),
First Reading

By President Hart

An Ordinance authorizing and directing the Mayor to execute an engagement letter with the law firm of McDonald Hopkins for the provision of legal services to assist and advise the City's Charter Review Commission; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, Cleveland Heights City Council, through adoption of Resolution 176-2022, created a Charter Review Commission ("CRC") to review the City Charter and develop recommendations to City Council for such amendments to the Charter, if any, that the CRC may find to be in the best interests of the City; and

WHEREAS, Resolution 176-2022 provided that the CRC may request that a consultant be engaged to aid it in the discharge of its responsibilities, and that Council would give full and fair consideration to any such request; and

WHEREAS, the CRC has indicated that would like for the City to hire an experienced outside attorney to aid in the discharge of its duties; and

WHEREAS, Council has determined that outside counsel should be retained, as requested, to assist the CRC in its work; and

WHEREAS, following consultation with the City's Law Department and discussion by the CRC Chair and another member with qualified outside attorneys, Counsel desires to engage the law firm of McDonald Hopkins to aid the CRC in its work.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights that:

SECTION 1. The Mayor shall be, and he is hereby, authorized and directed to execute an engagement letter with the law firm McDonald Hopkins for legal services in aid of the Charter Review Commission, substantially in accordance with the proposal attached hereto as Exhibit A and signed by attorney Kevin Butler of McDonald Hopkins.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and related to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. It is necessary that this Ordinance become immediately effective as an emergency measure necessary for the preservation of the public peace, health, safety, and welfare of the citizens of the City of Cleveland Heights, such emergency being the necessity to retain outside counsel to assist the Charter Review Commission at the earliest possible time. Wherefore, provided it receives the affirmative vote of five (5) or more members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

MELODY JOY HART
President of the Council

ADDIE BALESTER
Clerk of Council

PASSED:

Presented to Mayor: _____ Approved: _____

KAHLIL SEREN
Mayor

November 9, 2023

Via Email Only (WHanna@clevelandheights.gov)

City of Cleveland Heights
Hon. Kahlil Seren, Mayor
Members of City Council
c/o William R. Hanna, Esq., Director of Law
40 Severance Circle
Cleveland Heights, OH 44118

Dear Mayor Seren and Members of Council:

Thank you for the opportunity to work with the City of Cleveland Heights (“you” or the “client”) and, more specifically, your Charter Review Commission. We appreciate your confidence in us.

McDonald Hopkins LLC (“MH”) believes that an effective and successful attorney-client relationship is built on a mutual understanding of how we will work together with you to accomplish your objectives. MH customarily prepares an engagement letter using this format to memorialize our agreement concerning the identity of the client and the terms, scope, and nature of services MH will provide.

If you have any questions concerning this letter now or at any time during the engagement, do not hesitate to contact me. MH endeavors to provide quality services and we view quality communications as a key ingredient.

Identity of Client and Scope of Representation

MH’s client for this engagement will be you. The scope of our representation is to assist your Charter Review Commission with the following services:

- Provide the Commission a general overview of the charter review process and considerations for laws best suited for the charter versus those best suited for the ordinances
- Present an overview of the charter review process at a public meeting, allowing an opportunity for public input on areas in the charter that the Commission should consider for review

- Advise on approaches to certain charter provisions, in terms of what is typical or may be found within a range of charters of other cities
- Advise on whether particular language in the charter now should be updated in order that it be consistent with current law and best practices
- Assist with drafting charter amendments
- Attend Commission meetings on invitation of the Commission
- Provide other legal assistance as requested and approved by the Law Director

Legal Fees and Staffing

MH recognizes that I will be the attorney performing all or nearly all of the work for this engagement. If critical, I may assign certain tasks (such as research work) to others, consistent with any exception rates identified below. When MH forms a team for an engagement, MH strives to provide efficient, cost-effective services by involving attorneys and legal assistants with the experience appropriate to the task at hand.

Hourly Rate

We agree that notwithstanding firm's standard current hourly rates, we will offer you a rate for all attorneys involved in the matter, including myself, of \$375.00 per hour.

Not-to-Exceed Amount; Limited Scope

For this engagement, we will not bill in any amount greater than \$25,000.00 without your express permission. You agree that we are being retained for the limited scope of the engagement we identify above, and that this not-to-exceed amount is intended to assist you in formulating a budget for this work but that the time we spend on the engagement depends in large part how frequently and to what extent the Commission wishes to use our services. Please recognize that if we are requested or required to provide additional services, you agree that we may require that a new matter be opened or other fee arrangement be made.

Charges and Disbursements

Charges and expenses that MH incurs on your behalf will be passed on to you. These charges may include photocopying, messenger and delivery charges, computerized research, filing fees, and the like. MH will forward invoices for the services of others (such as consultants, expert witnesses, appraisers and local counsel, none of which are expected) to you for payment unless we have a different arrangement in writing.

Electronic Communication

MH communicates with clients by electronic and other means that are not completely secure against unauthorized access. There is some risk of disclosure and loss of attorney-client privilege in using these forms of communication because they do not ensure the confidentiality of their contents. If you are concerned about our use of any one or more of these forms of communication, please let me know immediately.

Billing

MH bills monthly for its services and costs advanced. MH often sends a monthly statement of account, itemizing amounts outstanding as of the date the statement is prepared.

MH invoicing is electronically generated. I will assume that invoices should be sent to this email unless otherwise instructed.

Payment

All invoices are due upon receipt, unless you make other arrangements with MH. MH reserves the right to withdraw as counsel if you fail to pay invoices in a timely manner.

Client Responsibilities

By agreeing to the engagement, you agree to cooperate fully with MH and to promptly provide all information known or available to you relevant to the engagement.

Term of Engagement

You or MH may terminate the engagement at any time for any reason by written notice, subject to applicable Rules of Professional Conduct (the “RPC”). If MH terminates the engagement, it will take such steps as are reasonably practical to protect your interests and, if you request, MH will suggest possible successor counsel and provide such counsel with whatever papers you have provided to us, upon payment of all outstanding invoices. If a court requires permission for withdrawal, MH will apply promptly for such permission and assist you as you desire to engage successor counsel.

Unless previously terminated, the engagement will terminate when MH sends you the final invoice for services. During the engagement and thereafter, MH will keep confidential any otherwise nonpublic information you have supplied in accordance with the RPC. At your request, MH will return your papers and property upon payment of all outstanding invoices. MH will retain its own files, including lawyer work product. MH will transfer any documents it retains to the person responsible for administering its records retention program. In order to minimize unnecessary storage costs, MH reserves the right to destroy or otherwise dispose of any such documents or other materials in accordance with MH’s retention policy or as we otherwise agree.

After the engagement ends, applicable laws or regulations may change in a manner that could impact your future rights and liabilities. Unless you actually engage MH to provide additional advice, MH has no continuing obligation to advise you with respect to future legal or other developments.

Conflicts

Before preparing this engagement letter, MH conducted an internal check of our records to determine whether a conflict might exist with one or more existing clients. Based on that check, it appears that no such conflict exists.

Under the RPC, MH must have undivided loyalty to its clients. This requirement means that a lawyer must refuse to accept or continue employment if the interests of another client may impair the lawyer's independent professional judgment. In this regard, MH represents many other companies and individuals. It is possible that during the engagement, some of our present or future clients may have disputes or transactions with you. As a result of these disputes or transactions, conflicts of interest may arise, and when they do, MH will address them with you in a manner consistent with the RPC.

When MH is not permitted to represent another client in a matter under the RPC, MH will not do so. When MH is permitted by the RPC to seek a waiver from you, MH may do so. For circumstances in which MH is granted the waiver, MH may represent the other client. MH will protect, however, your confidential information or documents entrusted to MH as required by the RPC.

Identification Number

MH's tax identification number is 34-1059058.

In Closing

If you are in agreement with the above terms of our engagement, please print this letter, sign and date this letter on its last page, and return it to me. We sincerely appreciate the opportunity to work with you and we welcome any questions you may have now, or throughout the engagement. As we noted at the outset, we view communications as a key ingredient to a successful attorney-client relationship.

Thank you for this opportunity to work with you.

Sincerely,



Kevin M. Butler

November 9, 2023
City of Cleveland Heights
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Engagement letter agreed to and accepted:

THE CITY OF CLEVELAND HEIGHTS

Name: _____

Title: _____

Date: _____

E-billing information:

Name of individual to receive invoice

Email address of individual to receive invoice

Proposed: 11/20/2023

RESOLUTION NO. 183-2023(MSES),
First Reading

By Mayor Seren

A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the Member Community Infrastructure Grant Program for the design control of SSO CH-30; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the Northeast Ohio Regional Sewer District ("NEORSD") is interested in assisting member communities with water quality issues associated with sewer infrastructure that adversely impact human health; and

WHEREAS, Ohio law authorizes regional water and sewer districts to enter into grant agreements with political subdivisions for water resource projects; and

WHEREAS, pursuant to Ohio Revised Code Chapter 6119, generally, and Ohio Revised Code Section 6119.06(F), NEORSD established a Member Community Infrastructure Program to provide water resource project funding opportunities to member communities or other eligible political subdivisions for sewer infrastructure projects in NEORSD's service area; and

WHEREAS, the grant funds would allow the City through this project to manage a Design- Only MCIP Project, which generally consists of diverting local flow from South Taylor Road and Washington Boulevard to NEORSD Lee Superior Relief Sewer; and

WHEREAS, NEORSD has determined, and this Council concurs, that the project will address water quality issues which are associated with sewer infrastructure and which adversely impact human health and the environment.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The Mayor is hereby authorized to enter into an agreement with the Northeast Ohio Regional Sewer District ("NEORSD") to accept funds under the Member Community Infrastructure Grant Program in the amount of Seventy-five Thousand, One Hundred Dollars (\$75,100.00) for the design control of SSO CH-30 Project and any and all related documents or agreements with NEORSD. The agreement and any related documents shall be approved as to form and subject to the final approval of the Director of Law.

SECTION 2. The City further agrees to pay One Hundred Percent (100%) of the

RESOLUTION NO. 183-2023(MSES)

cost over and above the maximum amount provided by NEORSD.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. it is necessary that this Resolution become immediately effective as an emergency measure necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to timely enter into the above-mentioned grant agreement to begin the project described herein at the earliest time possible. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

MELODY JOY HART
President of Council

ADDIE BASESTER
Clerk of Council

PASSED:

Presented to Mayor: _____

Approved: _____

KAHLIL SEREN
Mayor

Proposed: 11/20/2023

RESOLUTION NO. 184-2023(MSES),
First Reading

By Mayor Seren

A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the Member Community Infrastructure Grant Program for the Hampshire Road Illicit Connections and SSO Control Project; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the Northeast Ohio Regional Sewer District ("NEORSD") is interested in assisting member communities with water quality issues associated with sewer infrastructure that adversely impact human health; and

WHEREAS, Ohio law authorizes regional water and sewer districts to enter into grant agreements with political subdivisions for water resource projects; and

WHEREAS, pursuant to Ohio Revised Code Chapter 6119, generally, and Ohio Revised Code Section 6119.06(F), NEORSD established a Member Community Infrastructure Program to provide water resource project funding opportunities to member communities or other eligible political subdivisions for sewer infrastructure projects in NEORSD's service area; and

WHEREAS, the grant funds would allow the City through this project to manage a construction project consisting of the construction of new sanitary sewers and the rehabilitation of existing sewers to eliminate illicit connections and control two (2) SSO's for up to a 10-year, 1-hour rain event; and

WHEREAS, NEORSD has determined, and this Council concurs, that the project will address water quality issues which are associated with sewer infrastructure and which adversely impact human health and the environment.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The Mayor is hereby authorized to enter into an agreement with the Northeast Ohio Regional Sewer District ("NEORSD") to accept funds under the Member Community Infrastructure Grant Program in the amount of Ninety-nine Thousand Six Hundred Twenty-five Dollars (\$999,625.00) for the construction of the Hampshire Road Illicit Connections and SSO Control Project and to execute any and all related documents or agreements with NEORSD. The agreement and any related documents shall be approved as to form and subject to the final approval of the Director of Law.

RESOLUTION NO. 184-2023(MSES)

SECTION 2. The City further agrees to pay One Hundred Percent (100%) of the cost over and above the maximum amount provided by NEORSD.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. It is necessary that this Resolution become immediately effective as an measure necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to timely enter into the above-mentioned grant agreement to begin the project described herein at the earliest time possible. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

MELODY JOY HART
President of Council

ADDIE BALESTER
Clerk of Council

PASSED:

Presented to Mayor: _____

Approved: _____

KAHLIL SEREN
Mayor



MEMORANDUM

To: Kahlil Seren, Mayor
From: Brian Anderson, Assistant Director of Economic Development
Date: November 3, 2023
Subject: Ordinance No. 178-2023 - Legislation to authorize executing an agreement for the sale of the Taylor Tudor parcels

Overview:

In order for the Taylor Tudor restoration (and the larger Cain Park Village revitalization) to move forward, City Council will need to pass several pieces of legislation over the coming weeks/months to allow the City to enter into agreements with WXZ, the developer selected by the City in conjunction with an RFP issued in 2021, and allow construction activities to commence in early 2024 on the Taylor Tudor buildings. The legislation will include authorizations/approvals of a Purchase and Sale Agreement (PSA), Development Agreement, and TIF Ordinance.

Purpose of Ordinance No. 178-2023

This specific legislation authorizes the City to enter into a PSA with WXZ for the three parcels that comprise the Taylor Tudor buildings. As in other projects, one of the conditions to closing under the PSA will be the execution of a Development Agreement.

Proposed: 11/06/2023

ORDINANCE NO. 178-2023(PD),
Second Reading

By Mayor Seren

An Ordinance authorizing the Mayor to execute an agreement for the sale of certain real property located at 1900-1910 South Taylor Road, 1912-1926 South Taylor Road, and 1932-1946 South Taylor Road, Permanent Parcels No. 684-27-001, 684-26-011, and 684-26-012; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, certain real property identified as Permanent Parcels No. 684-27-001, 684-26-011 and 684-26-012, and more commonly known as 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio, (the "Property") is currently owned by the Cleveland Heights Land Reutilization Corporation and Cleveland Heights Land Reutilization Program; and

WHEREAS, the City desires to obtain title ownership of the Property and subsequently sell the Property to WXZ CPV LLC, an Ohio limited liability company, ("Purchaser") for redevelopment; and

WHEREAS, the City intends to sell the Property for a purchase price of One Dollar (\$1.00) in anticipation of the City receiving a mutually-agreed upon portion of tax increment financing services payments generated through the proposed Development in addition to other economic and non-economic benefits; and

WHEREAS, the sale of the Property is contingent upon negotiation and execution of a Development Agreement acceptable to both parties; and

WHEREAS, this Council has determined that it is in the best interest of the City and its residents to proceed with negotiation of a Development Agreement and the sale of the Property.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The Mayor is hereby authorized to execute any and all documents and take any actions necessary to obtain from the Cleveland Heights Land Reutilization Corporation and Cleveland Heights Land Reutilization Program the property identified as Permanent Parcels No. 684-27-001, 684-26-011, and 684-26-012, also identified as 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Cuyahoga County, Ohio (the "Property") and to subsequently execute a purchase agreement and any related documents with WXZ CPV LLC for the sale of the Property. The Purchase Agreement shall be substantially in accordance with the terms of the draft

ORDINANCE NO. 178-2023(PD)

agreement on file with the Clerk of Council, and the sale shall be contingent upon the successful negotiation and execution of a Development Agreement for the Taylor-Tudor Redevelopment Project. The purchase price for the property shall be the sum of One Dollar (\$1.00) plus reasonable and customary closing costs. The agreement shall contain such further terms as recommended by the Mayor and Director of Law and shall be approved as to form by the Director of Law.

SECTION 2. This Council finds the aforementioned Property to be sold is not needed for municipal purposes.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need for the City to meet construction deadlines. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take immediate effect and be force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

MELODY JOY HART
President of Council

ADDIE BALESTER
Clerk of Council

PASSED:

Presented to Mayor: _____

Approved: _____

KAHLIL SEREN
Mayor

REAL ESTATE PURCHASE AGREEMENT

(1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118)

This Real Estate Purchase Agreement (“**Agreement**”) is entered on _____, 2023 (“Effective Date”) between THE CITY OF CLEVELAND HEIGHTS, OHIO (“**Seller**”), a municipal corporation and political subdivision organized under the laws of the State of Ohio and its Charter, whose address is 40 Severance Circle, Cleveland Heights, Ohio 44118 and WXZ CPV LLC (“**Buyer**”), an Ohio limited liability company, whose address is 22720 Fairview Center Drive, Suite 150, Fairview Park, Ohio 44126.

ARTICLE 1. SALE OF THE PROPERTY; PURCHASE PRICE; CLOSING DATE

1.01 Sale of the Property. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, certain real property identified in the Cuyahoga County Records as Permanent Parcel Numbers 684-27-001, 684-26-011, and 684-26-012, and more commonly known as 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118, as further described in **Exhibit “A”** attached hereto and incorporated herein by reference, together with all easements, privileges and rights appurtenant thereto (the “**Property**”).

1.02 Purchase Price. The purchase price for the Property shall be the sum of **ONE AND NO/100 DOLLAR (\$1.00)** (the “Purchase Price”), payable by Buyer to Seller on the Closing Date. The parties have agreed upon the purchase price of \$1.00 because they anticipate that the City will receive a mutually agreed-upon portion of tax increment financing service payments generated from the Property pursuant to a Development Agreement between the parties, as the same is defined in Section 2.02(D), below.

1.03 Closing Date. Closing shall occur within fifteen (15) days of the satisfaction of the certain Conditions of Escrow set forth in Sections 2.02(A), (C) and (D), below (the “**Closing Date**”).

ARTICLE 2. ESCROW

2.01 Opening of Escrow. An escrow account shall be opened, pursuant to this Agreement at Chicago Title Insurance Company, Attention: Dave Mader located at 1111 Superior Avenue, Suite 600, Cleveland, Ohio 44114 and phone number at 216-598-5924, and e-mail at: dave.mader@ctt.com (the “**Title Company**” or “**Escrow Agent**”), prior to the Closing Date.

2.02 Conditions of Escrow. The close of such escrow, the Seller’s obligation to sell the Property, and the Buyer’s obligation to purchase the Property pursuant to this Agreement are conditioned on:

A. Marketable Title. The conveyance to Buyer of good and marketable title to the Property, as evidenced by title insurance issued by the Title Company, subject only to restrictions, easements or conditions as may be approved in writing by Buyer. Immediately following execution of this Agreement, Buyer shall order a commitment for title insurance from the Title Company. Within fourteen (14) days of receipt of the commitment for title insurance, Buyer shall notify Seller in writing of any restrictions, easements or conditions shown therein, if any, which are objectionable to Buyer. If so notified, the items that are objectionable to Buyer shall be considered “**title defects**” and shall be removed by Seller on or before the expiration of the Inspection Period, as defined below. If the title defects cannot be removed by Seller or Seller elects not to cure the title defects on or before the expiration of the Inspection Period, or any extensions of the Inspection Period as may be agreed to by the Buyer for the correction of these title

defects and Buyer elects not to waive the title defects, this Agreement shall be null and void and all funds and documents previously delivered to the parties or deposited into escrow shall be returned to the respective parties who delivered or deposited such funds or documents, and there shall be no further liability between the parties. If Buyer does not notify Seller of any title defects within said fourteen (14) day period set forth above, then such lack of notice shall be construed as Seller having no objections to any title defects and the conditions of this subsection 2.02(A) shall be deemed satisfied.

B. Delivery of Possession of Property. Delivery of exclusive possession of the Property on the Closing Date.

C. Site Inspection Prior to Closing. Buyer's obligation to purchase the Property is contingent upon inspection of the Property, including, but not limited to, a Phase II Environmental Site Assessment, by a qualified professional(s) of Buyer's choice. If Buyer is not satisfied with such inspection(s) then Buyer will notify Seller within sixty (60) days of the Effective Date of this Agreement that Buyer is voiding this Agreement (the "Inspection Period"). If Buyer does not void this Agreement within such sixty (60) days from the Effective Date, then this condition shall be deemed satisfied.

REGARDLESS OF WHETHER BUYER CONDUCTS ANY SUCH INSPECTIONS, BUYER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PROPERTY PURSUANT TO THIS AGREEMENT IS AND WILL BE MADE ON AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE BY SELLER, INCLUDING WITHOUT LIMITATION THE CONDITION OR VALUE OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE. BY EXECUTING THIS AGREEMENT, BUYER EXPRESSLY ACKNOWLEDGES AND AGREES TO THE FOREGOING PROVISIONS OF THIS PARAGRAPH, WHICH ARE MATERIAL, NEGOTIATED TERMS OF THIS AGREEMENT WITHOUT WHICH SELLER WOULD NOT ENTER INTO THIS AGREEMENT WITH BUYER.

Notwithstanding the foregoing or anything to the contrary contained herein, in the event Buyer's site inspections, including Buyer's Phase II Environmental Site Assessment, reveals any recognized environmental conditions or other hazardous conditions which require remediation at the Property, Seller shall assist Buyer in such remediation efforts by facilitating and supporting Buyer's efforts to seek and obtain remediation grants (e.g., the Ohio Brownfield Remediation Program) and/or any other sources of funding to be used for remediation of such conditions.

D. Development Agreement The parties shall negotiate and execute, on or before the Closing Date, a development agreement ("Development Agreement") providing for the terms and conditions of the redevelopment of the Property by the Buyer; the terms and conditions of assistance and/or incentives provided by the Seller to induce the Buyer's redevelopment of the Property; and a description of future phases of redevelopment of the real property adjacent to, across the street from, or nearby the Property. Such Development Agreement shall be approved by Seller's Council prior to execution of the same.

E. Quit Claim Deed. Seller shall convey title to Buyer by a statutory form quit claim deed delivered to the Escrow Agent prior to closing. A copy of the deed is attached hereto as Exhibit "B".

2.03 Failure of Conditions. Should any of the conditions specified in Section 2.02 (A) through (D) of this Agreement fail to occur at or before the Closing Date, Buyer shall have the power, exercisable by the giving of written notice to the Escrow Agent and to the Seller, to cancel such escrow, terminate this Agreement, and recover any amounts paid by it to Seller or to the Escrow Agent on account of the purchase price of the Property. The exercise of such power by Buyer shall not, however, constitute a waiver by it of

any other rights it may have against Seller for breach of this Agreement. The Escrow Agent shall be, and is hereby, irrevocably instructed by Seller on such failure of conditions and receipt of such notice from Buyer to refund immediately to Buyer all moneys and instruments deposited by it in escrow pursuant to this Agreement.

2.04 Prorations. There shall be no proration between Seller and Buyer of the real property taxes and assessments levied or assessed against the Property as shown on the latest available tax bills, and Seller shall assume all taxes and assessments. Utilities shall not be prorated between Seller and Buyer, and Seller shall assume all utility costs and charges.

2.05 Brokers 'Commissions. Both parties represent that neither have used the services of a broker or real estate agent and therefore no commission or fee is due to any such person. If either party used the services of a broker or real estate agent, that party shall be solely responsible for such costs.

2.06 Closing Expenses. The expenses of closing described in this Article shall be paid in the following manner:

- A. The full cost of securing the title insurance shall be paid by Buyer.
- B. Any costs of transfer and recording of title shall be paid by Buyer.
- C. Seller shall pay for recording any mortgage releases.
- D. Buyer shall pay for the cost of a preliminary title report and the title commitment for title insurance.
- E. Buyer shall pay the Escrow Agent's fee.
- F. Buyer shall pay the cost to prepare and file the deed.
- G. Buyer shall pay the cost of any conveyance fees or transfer taxes, if any.
- H. Each party shall bear any attorney's fees, appraisal fees or other expenses that each party has incurred which are not otherwise addressed herein.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLER

3.01 Warranties of Seller. Seller hereby represents and warrants to Buyer as follows:

- A. At closing, the Property is vacant.
- B. At closing, there is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof, by federal or state governmental authorities nor to the best knowledge and belief of Seller is any such proceeding or assessment contemplated by any federal or state governmental authority.
- C. As of the Closing Date, Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the Property, or any part thereof.
- D. At closing, there shall be no mechanics' liens or other liens on the Property.

ARTICLE 4. BREACH

4.01 Breach by Seller. Should Seller default on the full and timely performance of any

obligations under the terms of this Agreement for any reason other than Buyer's default, Buyer may:

- A. Enforce specific performance of this Agreement;
- B. Request that any money paid to Seller shall be forthwith returned to Buyer; or
- C. Bring suit for damages against Seller.

4.02 Breach by Buyer. Should Buyer fail to consummate the purchase of the Property, the conditions to Buyer's obligations set forth in Paragraph 2.02 of this Agreement having been satisfied and Buyer being in default, and Seller not being in default hereunder, Seller may retain possession of the Property. The Seller may also terminate any Development Agreement governing the subject Property between Seller and Buyer. The Seller hereby waives any other legal right or remedy.

ARTICLE 5. MISCELLANEOUS

5.01 Binding Agreement. This Agreement shall be binding on the successors and the assigns of the parties.

5.02 Survival of Covenants. Any of the representations, warranties, covenants and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the closing of the transaction contemplated hereby shall survive the closing and shall not be merged therein.

5.03 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Buyer, as the case may be, at the following addresses.

If to the Seller: City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio 44118

Attn: Mayor
Roetzel & Andress
1375 East 9th Street, 10th Floor
Cleveland, Ohio 44114
Attn: William R. Hanna, Esq.

If to Buyer: WXZ CPV LLC
c/o WXZ Development LLC
22720 Fairview Center Drive, Suite 150
Fairview Park, Ohio 44126
Attn: Matthew Wymer
Email: mwymer@wxzinc.com

With a copy to: Kohrman Jackson & Krantz LLP
1375 East 9th Street, 29th Floor
Cleveland, OH 44114
Attn: Rich A. Morehouse, Esq.

5.04 Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Ohio.

5.05 Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality

or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.06 Prior Agreements. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter.

5.07 Time. Time is of the essence in this Agreement.

5.08 Insurance. Seller shall maintain property damage and liability insurance on the Property until the Closing Date.

5.09 Counterparts. This Agreement shall be executed in one or more counterparts, including copies, PDF or other electronic means, all of which, when assembled, shall constitute an complete original agreement.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunder set their hands this _____ day of _____, 2023.

BUYER:
WXZ CPV LLC

By:

Title:

SELLER:
CITY OF CLEVELAND HEIGHTS

By:

Title: _____

Approved as to legal form.

William R. Hanna, Law Director

Dated: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Address: 1908, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 4; 5 and 6 in The Monroe Allotment Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows: Beginning on the Westerly line of Taylor Road at the Southeasterly corner of said Sublot No. 6; Thence Northerly along said Westerly line of Taylor Road, 134.15 feet to the Southerly end of a turnout between said Westerly line of land and the Southerly line of Superior Park Drive; Thence Northwesterly along said turnout 32.71 feet to the Westerly end thereof; Thence Westerly along said Southerly line of Superior Park Drive, 84.25 feet; Thence Southerly on a line parallel to said Westerly line of Taylor Road, 154.90 feet to the Southerly line of said Sublot No. 6; Thence Easterly along said Southerly line of Sublot No. 6, 105 feet to the place of beginning, be the same more or less, but subject to all legal highways.

EXCEPTING THEREFROM the above parcel that part as shown by Dedication Plat, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, for Taylor Road widening being part of Euclid Township Lot Nos. 16 and 57, Tract 1.

Parcel Number: 684-27-001

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 1, 2 and 3 in the Monroe Allotment Co.'s Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of Taylor Road, at the Northeasterly corner of said Sublot No. 1; thence Southerly along the Westerly line of Taylor Road, 124.79 feet to the Northerly end of a turnout between the Westerly line of Taylor Road, and the Northerly line of Superior Park Drive; thence Southwesterly along said turnout 31.63 feet to the Northerly line of Superior Park Drive; Thence Westerly along the Northerly line of Superior Park Drive, 85.57 feet to the Southeasterly corner of land conveyed to The Mera Realty Company by deed dated January 11, 1930 and recorded in Volume 3988, Page 79 of Cuyahoga County Records; Thence Northerly along the Westerly line of land so conveyed 145 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 27.22 feet to the Northwesterly corner of land

described in the Deed from The Cleveland Trust Company to The Orange Realty Company, dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so described in deed to The Orange Realty Company, about 0.45 feet to the Southwesterly corner thereof; Thence Easterly along the Southerly line of land so described in the Deed from The Orange Realty Company about 58 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-011

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 36 and 37 in Seth Minor Subdivision of part of Original Euclid Township Lot Nos. 15 and 16, Tract No. 1, as shown by the recorded plat in Volume 85 of Maps, Page 23 of Cuyahoga County Records, and also a part of Sublot No. 1 in The Monroe Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, Tract No. 1, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of South Taylor Road, (formerly Taylor Road, 100 feet wide), as shown by the Dedication Plat of South Taylor Road Widening, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, at a point which is distant 100 feet Northerly, measured along the Westerly line of South Taylor Road, from its intersection with the Southerly line of said Sublot No. 37; thence Westerly parallel to the Southerly line of Sublot No. 37, 80 feet; thence Southerly and parallel to the Westerly line of South Taylor Road, 100 feet to the Southerly line of said Sublot No. 37; Thence Easterly along the Southerly line of said Sublot No. 37, about 23 feet to the Northwesterly corner of the land conveyed to The Orange Realty Company by deed dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so conveyed to The Orange Realty Company, 0.45 feet to the Southwesterly corner, thereof; thence Easterly along the Southerly line of land so conveyed to The Orange Realty Company about 57 feet to the Westerly line of South Taylor Road; thence Northerly along the Westerly line of South Taylor Road, about 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-012

EXHIBIT B

QUIT-CLAIM DEED

(Pursuant to Ohio Revised Code Section 5302.11)

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF CLEVELAND HEIGHTS, an Ohio municipal corporation and political subdivision organized under the laws of the State of Ohio and its Charter, whose tax mailing address is 40 Severance Circle, Cleveland Heights, Ohio 44118, as Grantor, for valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, does hereby transfer, convey, grant and quitclaim unto WXZ CPV LLC, an Ohio limited liability company, the Grantee, whose tax mailing address is c/o WXZ Development LLC, 22720 Fairview Center Drive, Suite 150, Fairview Park, Ohio 44126, Grantors entire interest in the following described real property (the "**Property**"):

Legal Description Attached hereto as Exhibit A

Property Address: 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118

Permanent Parcel Nos.: 684-27-001
684-26-011
684-26-012

Prior Deed References: Instrument No. 201801220500 (as to PPN 684-27-001)
Instrument No. 202111120067 (as to PPN 684-26-011 and 684-26-012)

Except a) any mortgage assumed by Grantee, b) such restrictions, conditions, easements (however created) and encroachments as do not materially adversely affect the use or value of the real property transferred herein, c) zoning ordinances, if any, and d) taxes and assessments, both general and special, not yet due and payable.

City of Cleveland Heights

Khalil Seren, Mayor

ACKNOWLEDGMENT

STATE OF OHIO)
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Khalil Seren, the Mayor of the City of Cleveland Heights, a municipal corporation, on behalf of the City.

NOTARY PUBLIC
My Commission Expires:

This Instrument Prepared By:
Kohrman Jackson & Krantz LLP
1375 East 9th Street, 29th Floor
Cleveland, Ohio 44114
Attn: James J. Scherer
Email: jjs@kjk.com

Exhibit A
to Quitclaim Deed

Address: 1908, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 4; 5 and 6 in The Monroe Allotment Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows: Beginning on the Westerly line of Taylor Road at the Southeasterly corner of said Sublot No. 6; Thence Northerly along said Westerly line of Taylor Road, 134.15 feet to the Southerly end of a turnout between said Westerly line of land and the Southerly line of Superior Park Drive; Thence Northwesterly along said turnout 32.71 feet to the Westerly end thereof; Thence Westerly along said Southerly line of Superior Park Drive, 84.25 feet; Thence Southerly on a line parallel to said Westerly line of Taylor Road, 154.90 feet to the Southerly line of said Sublot No. 6; Thence Easterly along said Southerly line of Sublot No. 6, 105 feet to the place of beginning, be the same more or less, but subject to all legal highways.

EXCEPTING THEREFROM the above parcel that part as shown by Dedication Plat, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, for Taylor Road widening being part of Euclid Township Lot Nos. 16 and 57, Tract 1.

Parcel Number: 684-27-001

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 1, 2 and 3 in the Monroe Allotment Co.'s Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of Taylor Road, at the Northeasterly corner of said Sublot No. 1; thence Southerly along the Westerly line of Taylor Road, 124.79 feet to the Northerly end of a turnout between the Westerly line of Taylor Road, and the Northerly line of Superior Park Drive; thence Southwesterly along said turnout 31.63 feet to the Northerly line of Superior Park Drive; Thence Westerly along the Northerly line of Superior Park Drive, 85.57 feet to the Southeasterly corner of land conveyed to The Mera Realty Company by deed dated January 11, 1930 and recorded in Volume 3988, Page 79 of Cuyahoga County Records; Thence Northerly along the Westerly line of land so conveyed 145 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 27.22 feet to the Northwesterly corner of land

described in the Deed from The Cleveland Trust Company to The Orange Realty Company, dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so described in deed to The Orange Realty Company, about 0.45 feet to the Southwesterly corner thereof; Thence Easterly along the Southerly line of land so described in the Deed from The Orange Realty Company about 58 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-011

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 36 and 37 in Seth Minor Subdivision of part of Original Euclid Township Lot Nos. 15 and 16, Tract No. 1, as shown by the recorded plat in Volume 85 of Maps, Page 23 of Cuyahoga County Records, and also a part of Sublot No. 1 in The Monroe Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, Tract No. 1, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of South Taylor Road, (formerly Taylor Road, 100 feet wide), as shown by the Dedication Plat of South Taylor Road Widening, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, at a point which is distant 100 feet Northerly, measured along the Westerly line of South Taylor Road, from its intersection with the Southerly line of said Sublot No. 37; thence Westerly parallel to the Southerly line of Sublot No. 37, 80 feet; thence Southerly and parallel to the Westerly line of South Taylor Road, 100 feet to the Southerly line of said Sublot No. 37; Thence Easterly along the Southerly line of said Sublot No. 37, about 23 feet to the Northwest corner of the land conveyed to The Orange Realty Company by deed dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so conveyed to The Orange Realty Company, 0.45 feet to the Southwesterly corner, thereof; thence Easterly along the Southerly line of land so conveyed to The Orange Realty Company about 57 feet to the Westerly line of South Taylor Road; thence Northerly along the Westerly line of South Taylor Road, about 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-012



MEMORANDUM

To: Members of Cleveland Heights City Council
Cc: Kahlil Seren, Mayor; William Hanna, Director of Law
From: Eric Zamft, Director of Planning and Development
Brian Anderson, Assistant Director of Economic Development
Date: November 3, 2023
Subject: Legislation to Approve Amendment to TWG Purchase Agreement

Overview and Background

In December of 2022, City Council authorized the Mayor to enter into a Purchase and Sale Agreement (PSA) with TWG Development LLC for the City-owned property at 2228 Noble Road for the construction of an affordable housing project on that site. The PSA was then signed by the parties in January of 2023. The PSA provided that the Purchaser (TWG) could not close on the purchase of the property until the parties sign a mutually agreeable Development Agreement, and further provided that the execution of the agreement needed to occur not later than 180 days from the Ohio Housing Finance Authority (OHFA) Tax Credit Notification Date (May 19, 2023). Because a Development Agreement has not yet been agreed upon and executed (and in fact on October 16, 2023, Council voted not to authorize a previously-negotiated Development Agreement) the PSA will lapse on or about November 15, 2023.

Request to Extend PSA

In connection with the pursuit of OHFA tax credits, TWG brought in Start Right CDC, as their local housing partner in the project. At the present time, despite Council's prior decision not to approve the previous development agreement, OHFA has granted TWG/Start Right CDC the ability to use the tax credit award in 2024 rather than 2023. They have also granted TWG additional flexibility to modify the site plan and building design of the project in order to better address community concerns about the previous design.

TWG/Start Right CDC has begun a community engagement process (with meetings held to date on October 23 and October 30) to gain additional feedback from the neighborhood. Their intent is to use this feedback to improve the site plan and design of their proposed project. In connection with this effort, the City has received a request from TWG and Start Right CDC to amend the PSA to extend the deadline to reach a Development Agreement until June 1, 2024, subject to a further 90-day extension, if approved by the City (see attached request letter).

The proposed legislation to extend the PSA will simply allow the community engagement process to continue – it does not mean that any particular project is being approved, or that the property can be transferred to TWG at this time. Any potential resulting project would still need a Development Agreement to be reviewed and approved by Council, as well as review and approval by the City's design review boards.

Proposed: 11/06/2023

ORDINANCE NO. 181-2023 (PD),
Second Reading

By Councilmember Mattox

An Ordinance authorizing the Mayor to execute a second amendment to an agreement for the sale of certain real property located at 2228 Noble Road (primary address) consisting of several contiguous parcels; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the City is the owner of approximately 2.08 acres of property located at or in the vicinity of 2228 Noble Road, 890 Woodview Road, 870 Woodview Road, 868 Woodview Road, and 860 Woodview Road, Permanent Parcel Nos. 681-38-080, 681-38-012, 681-38-010, 681-38-009, 681-38-008, 681-06-004, and 681-06-121 in the City of Cleveland Heights (the "Property"); and

WHEREAS, TWG Development, LLC ("TWG"), an Indiana limited liability company, is interested in the potential purchase of said property for the construction of an affordable-housing residential development; and

WHEREAS, by Ordinance No. 180-2022, this Council indicated its desire to grant an interest in the Property to TWG sufficient to allow TWG to submit applications and/or otherwise explore tax credits and other funding sources for its desired project; with the understanding that no property transfer will occur until the City and TWG enter into a development agreement satisfactory to both parties; and

WHEREAS, the parties subsequently entered into a purchase agreement and amendment for the sale of the Property, contingent upon the execution of a development agreement satisfactory to both parties; and

WHEREAS, TWG was subsequently awarded tax credits for a low/moderate-income housing project on the Property; and

WHEREAS, the City and TWG could not agree on a development plan was satisfactory to both parties; and

WHEREAS, TWG wishes to partner with Start Right Community Development Corporation to explore further options for development on this Property; and

WHEREAS, this Council has determined that it is in the best interest of the City and its residents to proceed with the execution of a second amendment to a development agreement, with the understanding that no sale of the property will occur unless a development agreement satisfactory to this Council and the Administration is negotiated.

ORDINANCE NO. 181-2023(PD)

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The Mayor is hereby authorized to execute a second amendment to a purchase agreement with TWG Development, LLC for the sale of certain real property located at located in the vicinity of Noble Road and Woodview Road identified as Permanent Parcel Nos. 681-38-080, 681-38-012, 681-38-010, 681-38-009, 681-06-004, 681-06-121, and 681-38-008 (the "Property"). The second amendment shall extend the time for execution of a mutually-acceptable development agreement until June 1, 2024. Any such development agreement remains subject to the approval of this Council. The Mayor is further authorized to extend the deadline by an additional (90) ninety days beyond June 1, 2024 without need of further Council action, if such extension is requested by TWG and is, in the judgment of the Mayor, in the best interests of the City.

SECTION 2. Documents implementing the above transaction shall be approved as to form by and subject to the final approval of the Director of Law.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. It is necessary that this Ordinance become immediately effective as an emergency measure necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to explore development options for the Property on a timely basis. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take immediate effect and be force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

MELODY JOY HART
President of Council

ADDIE BALESTAR
Clerk of Council

ORDINANCE NO. 181-2023(PD)

PASSED:

Presented to Mayor: _____

Approved: _____

KAHLIL SEREN
Mayor

SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the “Second Amendment”) is entered into by and between THE CITY OF CLEVELAND HEIGHTS, an Ohio municipal corporation (the “Seller”) and TWG DEVELOPMENT, LLC, an Indiana limited liability company (the “Purchaser”). Each party to this Second Amendment is individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about January 20, 2023, the Parties entered into that certain Agreement for Purchase and Sale of Real Property (the “Agreement”) relative to the real property described therein.

WHEREAS, pursuant to the terms of the Agreement, Purchaser deposited the sum of Ten Thousand Dollars (\$10,000.00) with the Title Company (the “Earnest Money”) to be applied to the Purchase Price at Closing or otherwise distributed in accordance with the terms of the Agreement.

WHEREAS, pursuant to the terms of the Agreement, the Parties had one hundred eighty (180) days from the Tax Credit Notification Date to negotiate and execute a mutually satisfactory Development Agreement, the execution of which being a condition precedent to Closing.

WHEREAS, on or about May 19, 2023, the Parties entered into that certain First Amendment to Agreement for Purchase and Sale of Real Property (the “First Amendment”) wherein the Tax Credit Notification Date was agreed to be May 19, 2023.

WHEREAS, pursuant to the terms of the First Amendment, the Parties had one hundred eighty (180) days from the May 19, 2023 Tax Credit Notification Date (i.e., November 15, 2023) in which to execute a mutually satisfactory Development Agreement and proceed to Closing.

NOW, THEREFORE, based upon the recitals, representations, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties hereto agree to the following:

1. That Section 9 of the Agreement, as amended by the First Amendment, is hereby amended and restated to read as follows:

The Parties shall have until June 1, 2024 to execute a mutually satisfactory Development Agreement for the construction of a multi-family residence on the Property and proceed to Closing, subject to Purchaser’s right to extend the Closing Date as provided in Section 11(a). The City may extend the June 1, 2024 deadline for a further period of ninety (90) days without additional action by City Council, to be evidenced in a writing signed by the Mayor in a form approved by the Director of Law. In the event the Parties are unable to negotiate and execute a mutually acceptable Development Agreement within the aforementioned time periods, Seller

shall not be required to sell and Purchaser shall not be required to purchase the property. The Parties agree that Purchaser and Seller's administration shall use good faith efforts to negotiate such Development Agreement; and Purchaser acknowledges and understands that such Agreement must be approved by Cleveland Heights City Council in its sole discretion prior to execution.

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.

2. Earnest Money. Upon full execution of this Second Amendment, the previously deposited Earnest Money in the amount of Ten Thousand Dollars (\$10,000.00) shall become fully non-refundable to Purchaser except in the event of Seller's default under the Agreement, as amended by the First Amendment and this Second Amendment.
3. Representations. The Parties represent and warrant that each Party to this Second Amendment has full and unrestricted power, right, and authority to enter into this Second Amendment and perform its respective obligations hereunder.
4. Recitals. The recitals set forth herein are incorporated in this Second Amendment by reference.
5. Headings. The headings preceding each Section are intended for the convenience of the Parties to this Second Amendment and have no legal significance.
6. Capitalized Terms. Capitalized terms not defined herein shall have the meaning as ascribed in the Agreement and/or First Amendment as applicable.
7. Execution in Counterparts. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document. Signatures delivered by electronic means (facsimile, pdf scan, etc.) shall be deemed binding originals thereof.
8. Binding Effect. This Second Amendment shall bind and inure to the benefit of the Parties hereto, their respective heirs, beneficiaries, members, partners, shareholders, subsidiaries, affiliates, agents, officers, directors, employees, insurers, successors, assigns, and all other representatives acting on the Parties' respective behalves.
9. Amendment. The Agreement, as amended by the First Amendment and this Second Amendment, shall not be amended, changed, or modified except by written instrument signed by all Parties hereto.
10. Incorporation/Conflict. The terms and conditions of the Agreement, as amended by the First Amendment, are incorporated herein by reference. In the event of a conflict between the terms and conditions of the Agreement, as amended by the

First Amendment, and this Second Amendment, the terms and conditions of this Second Amendment shall control.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to Agreement for Purchase and Sale of Real Property as of the dates indicated below.

PURCHASER:

TWG DEVELOPMENT, LLC

SELLER:

THE CITY OF CLEVELAND HEIGHTS

Alex Frazier, Development Director

Date: _____

Kahlil Seren, Mayor

Date: _____

Approved as to legal form:

William R. Hanna, Law Director