

THIRD AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS THIRD AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the “Third 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 Third 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.

WHEREAS, on or about November 15, 2023, the Parties entered into that certain Second Amendment to Agreement for Purchase and Sale of Real Property (the “Second Amendment”) wherein the Parties had until June 1, 2024 to execute a mutually satisfactory Development Agreement, subject to Developer’s right to extend the Closing Date as provided in Section 11(a) of the Agreement and further subject to the right of the City to further 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).

WHEREAS, the Parties are desirous of entering into this Third Amendment to: (a) clarify the Property that is subject to the Agreement will no longer include PPNs 631-38-009, 631-38-010 and/or a portion of 631-38-008; (b) memorialize a reduction of the Purchase Price as a result thereof; and (c) amend the Closing Date.

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 Exhibit A of the Agreement is hereby amended and restated to read as follows:

The tract or tracts of land situated in Cuyahoga County, Ohio, and described as Fiscal Officer Permanent Parcel Numbers:

681-06-004
681-06-121
681-38-008 (a portion of same per to be approved Lot Split and Consolidation Plat)
681-38-012
681-38-080

2. That Section 2 of the Agreement is hereby amended to reflect a reduction in the Purchase Price in the amount of Twenty-Nine Thousand Dollars (\$29,000.00). Accordingly, the total Purchase Price for the Property shall be Two Hundred Sixteen Thousand Dollars (\$216,000.00).
3. That Section 11(a) of the Agreement shall be amended to read as follows:
 - 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 sixty (60) days (or such other earlier or later date as reasonably agreed upon by the Parties hereto) after the execution by both Parties of a Development Agreement and the receipt of all necessary City and/or County approvals of the Lot Split and Consolidation Plat (splitting a portion of PPN 681-38-008 to be conveyed to Purchaser, which will be recorded at Closing). Notwithstanding the foregoing, 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 (\$25,000.00).
4. Representations. The Parties represent and warrant that each Party to this Third Amendment has full and unrestricted power, right, and authority to enter into this Third Amendment and perform its respective obligations hereunder.
5. Recitals. The recitals set forth herein are incorporated in this Third Amendment by reference.
6. Headings. The headings preceding each Section are intended for the convenience of the Parties to this Third Amendment and have no legal significance.

7. **Capitalized Terms.** Capitalized terms not defined herein shall have the meaning as ascribed in the Agreement, First Amendment and/or Second Amendment as applicable.
8. **Execution in Counterparts.** This Third 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.
9. **Binding Effect.** This Third 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.
10. **Amendment.** The Agreement, as amended by the First Amendment, the Second Amendment and this Third Amendment, shall not be amended, changed, or modified except by written instrument signed by all Parties hereto.
11. **Incorporation/Conflict.** The terms and conditions of the Agreement, as amended by the First Amendment and Second 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 Second Amendment, and this Third Amendment, the terms and conditions of this Third Amendment shall control.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Third 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