

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.

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MELODY JOY HART  
President of Council

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ADDIE BALESTAR  
Clerk of Council

ORDINANCE NO. 181-2023(PD)

PASSED:

Presented to Mayor: \_\_\_\_\_

Approved: \_\_\_\_\_

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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

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Alex Frazier, Development Director

Date: \_\_\_\_\_

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Kahlil Seren, Mayor

Date: \_\_\_\_\_

Approved as to legal form:

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William R. Hanna, Law Director