

RESOLUTION NO. 2022 - 32

**A RESOLUTION AMENDING A PURCHASE AND SALE AGREEMENT
WITH SHEPHERD REAL ESTATE, LLC TO EXTEND THE
CONTINGENCY DEADLINE AND CLOSING DATE**

WHEREAS, by Resolution 2022-11, Council did authorize a Purchase and Sale Agreement with Shepherd Real Estate, LLC to acquire property known as 6516 Wiehe Road; and

WHEREAS, by Resolution 2022-29, Council did amend the Agreement to clarify that the property to be purchased known as 6516 Wiehe Road included two buildings and the parcels known as Hamilton County Auditor's parcel numbers 528-0004-0393 and 528-0004-0394; and

WHEREAS, Shepherd Real Estate, LLC signed an Amendment to the Purchase and Sale Agreement clarifying the property to be acquired, and in part extending the Closing date to September 30, 2022 to allow Shepherd Real Estate, LLC to satisfy the contingencies of Paragraph 2.1(f), *Clearing Real Property*, to be able to complete the acquisition; and

WHEREAS, Shepherd Real Estate, LLC has asked for an extension of the Purchase and Sale Agreement, as approved and as amended, to extend the Closing date to no later than Nov. 18, 2022 2022, to meet the final contingencies of Paragraph 2.1(f), *Clearing Real Property*, in the Purchase and Sale Agreement.

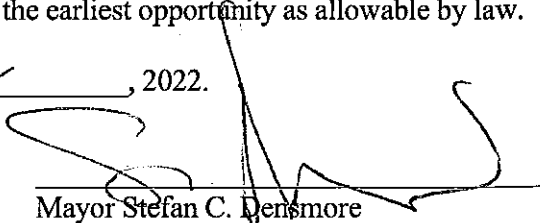
NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Golf Manor, Hamilton County, Ohio, that:

SECTION I. Council does hereby ratify the Purchase and Sale Agreement authorized by Resolution 2022-11, and the Amendment to the Purchase and Sale Agreement dated August 11, 2022, copies of which are attached hereto.

SECTION II. Council does authorize an amendment and extension to the Purchase and Sale Agreement, in substance and form of the Amendment attached hereto, to extend the contingency date for clearing the real property and Closing on the real property to Nov 18, 2022.

SECTION III. This Resolution shall take effect the earliest opportunity as allowable by law.

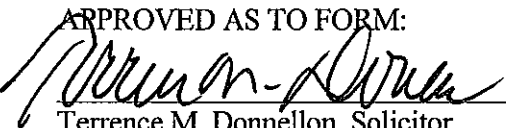
PASSED this 24th day of October, 2022.


Mayor Stefan C. Denismore

ATTEST:


Paula Burgin, Assistant Clerk

APPROVED AS TO FORM:


Terrence M. Donnellon, Solicitor

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

WHEREAS, Shepherd Real Estate, LLC as Seller, and the Village of Golf Manor, Ohio as Buyer, entered into a Purchase and Sale Agreement dated February 15, 2022, to enable the Buyer to acquire from the Seller certain Real Estate identified as 6516 Wiehe Road; and

WHEREAS, Shepherd Real Estate, LLC as Seller, and the Village of Golf Manor, Ohio as Buyer, entered into an Amendment to Purchase and Sale Agreement dated August 11, 2022, to clarify that the Real Estate to be acquired included both Auditor's parcel numbers 528-0004-0393 and 528-0004-0394, and extending the contingency date to meet the terms and conditions of Paragraph 2.1(f) of the Purchase and Sale Agreement, *Clearing Real Property*, and Closing to September 30, 2022; and

WHEREAS, Seller has requested an extension of the Purchase and Sale Agreement, and the Amendment to Purchase and Sale Agreement, to extend the date by which the contingency for clearing the real property must be completed, and Closing will occur to a date no later than October 28, 2022.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and the consideration as set forth in the original Purchase and Sale Agreement dated February 15, 2022, the parties do amend the Purchase and Sale Agreement, and the Amendment to Purchase and Sale Agreement, as follows:

1. Consistent with the terms of the original Purchase and Sale Agreement, as amended by the Amendment to Purchase and Sale Agreement, Buyer shall remove all debris, including motor vehicles, parts of motor vehicles and other portable tangible property, from the Real Estate on or before the Closing, which Closing the parties agree to set no later than October 28, 2022 at the offices of Central Land Title, 3074 Madison Road, Cincinnati, Ohio 45209, or such other convenient location as the parties may agree. No less than Two (2) days prior to Closing, Seller shall allow Buyer to visually inspect the interior of the buildings on the Real Estate to be sure that the terms and conditions of Paragraph 2.1(f) have been satisfied.

2. All other terms and conditions of the Purchase and Sale Agreement dated February 15, 2022, as amended by an Amendment to the Purchase and Sale Agreement dated August 11, 2022, are hereby reaffirmed.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have duly executed this Amendment to Purchase and Sale Agreement as of the dates listed below.

SELLER:

Shepherd Real Estate, LLC
an Ohio limited liability company

By: _____

Roger A. Bien

Its: Managing Member

Date: _____

BUYER:

Village of Golf Manor, Ohio
an Ohio municipal corporation

By: _____

Ron Hirth

Its: Village Administrator

Date: _____

APPROVED AS TO FORM:



Terrence M. Donnellon, Solicitor

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement" or "Purchase Agreement") is made this 15th day of February, 2022 ("Effective Date") by and between **Shepherd Real Estate, LLC**, an Ohio limited liability company, at 1203 Herschel Avenue, Cincinnati, Ohio 45208 ("Seller"), and the **Village of Golf Manor, Ohio**, an Ohio municipal corporation, at 6450 Wiehe Road, Golf Manor, Ohio 45237 ("Buyer").

WHEREAS, Seller is the fee simple owner of a certain parcel of improved real property known as 6516 Wiehe Road located in the Village of Golf Manor, Hamilton County, State of Ohio, Auditor's parcel number 528-0004-0394 ("Real Estate"), which is a commercially zoned property of approximately 0.316 acres with an industrial warehouse constructed thereon, which warehouse has been condemned. The Real Estate is more particularly described on Exhibit A attached hereto and by reference made a part hereof; and

WHEREAS, the Community Revitalization Grant Review Committee of Hamilton County, Ohio has authorized Buyer under a Community Revitalization Grant (CRG) to acquire the Real Estate to remove blight in the Village at an acquisition cost of up to One Hundred Fifty Thousand Dollars (\$150,000) upon approval by the Council of the Village of Golf Manor of a Purchase and Sale Agreement accepted by the Seller and approval of such transaction by the Board of County Commissioners of Hamilton County, Ohio; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the Real Estate from Seller upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer agrees to purchase the Real Estate from Seller, and Seller agrees to sell the Real Estate to Buyer, on the following terms and conditions:

SECTION 1 **REAL ESTATE**

1.1 **Purchase Price**. The Purchase Price for the Real Estate shall be One Hundred Fifty Thousand Dollars (\$150,000) ("Purchase Price") payable as follows:

(a) **Down Payment**. One Thousand Dollars (\$1,000) of the Purchase Price shall be paid with the execution of this Purchase Agreement and shall be held in escrow with a title agency to be designated by Buyer within Ten (10) days of the Effective Date of the execution of this Agreement. The Down Payment shall be held by the Escrow Agent in a non-interest bearing escrow account.

(b) **Balance of Purchase Price**. The balance of the Purchase Price shall

be paid by Buyer in immediately available funds after the application of the Down Payment and any apportionments as provided herein at the Closing, hereinafter defined.

(c) Application of Down Payment. The Escrow Agent shall hold the Down Payment until the Closing or sooner termination of this Agreement, and shall pay over or apply such proceeds in accordance with the terms of this Agreement. The parties acknowledge that Escrow Agent is acting solely at the request of the parties to hold the Down Payment for their convenience, that Escrow Agent shall not be deemed to be the agent of either of the parties, and that Escrow Agent shall not be liable to either of the parties for any act or omission on its part unless taken or suffered as a result of Escrow Agent's gross negligence. Seller and Buyer shall jointly and severally indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions involving gross negligence on the part of Escrow Agent. Escrow Agent has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this Agreement.

1.2 Real Estate. At Closing, the Seller shall deliver to Buyer good and marketable title to the Real Estate by Limited Warranty Deed, free and clear of any encumbrances. With respect to the conveyance of the fee simple interest in the Real Estate, such conveyance shall include all right, title and interest to Seller, if any, in and to:

(a) Any land lying in the bed of any street, road, avenue or alley, opened or proposed, in front of, or running through or adjoining the Real Estate;

(b) Any easement, privilege or right-of-way over, contiguous or adjoining the Real Estate, and all the others, if any, inuring to the benefit of the Real Estate or the fee owner thereof;

(c) The appurtenances and hereditaments belonging or in any way appertaining to the Real Estate;

(d) All of the buildings and improvements, including, but not limited to, any pylon sign, situated on the Real Estate (collectively, the "Building");

(e) All right, title and interest, if any, in and to the fixtures attached or appurtenant to the Building or the Real Estate;

SECTION 2 **TERMS AND CONDITIONS OF SALE**

2.1 Contingencies. The purchase of the Real Estate by Buyer from Seller is contingent upon the following conditions being satisfied within the Due Diligence Period,

which shall be a period of time commencing upon the Effective Date and contingent for One Hundred Twenty (120) days unless extended.

(a) Council Approval. Buyer receiving formal legislative approval by the Council of the Village of Golf Manor, Ohio in conjunction with Council approving a Joint Agreement with the Board of County Commissioners of Hamilton County, Ohio, a copy of which is attached hereto as Exhibit B. Buyer agrees to pursue such approval at the next regularly scheduled Meeting of the Council of the Village of Golf Manor, but no later than February 28, 2022.

(b) Grant Approval. Buyer receiving final grant approval to acquire the Real Estate in a Community Revitalization Grant through the Board of County Commissioners of Hamilton County, Ohio, which approval shall be obtained within Ninety (90) days of the Effective Date of this Agreement. If Buyer is unable to obtain such Revitalization Grant funding for the purchase of the Real Estate, Buyer shall immediately notify Seller that the grant has not been approved and this Agreement may terminate at the option of Buyer.

(c) Due Diligence Documents. Buyer receiving, within Ten (10) days of the Effective Date, any existing surveys and abstracts of title, title insurance commitments, reports and policies for the Real Estate, and any environmental site assessments and reports concerning the Real Estate ("Due Diligence Documents") which Seller may have in its possession. Upon receipt of such Due Diligence Documents, Buyer shall have Ten (10) days within which to review such Due Diligence Documents and either terminate the Purchase Agreement or waive any further exceptions concerning such Due Diligence Documents to proceed to Closing.

(d) Due Diligence Inspection/Review. After receipt of the Due Diligence Documentation, Seller agrees to cooperate with Buyer in providing any additional documentation reasonably requested by Buyer within Three (3) business days after Buyer's request thereof, provided such information is in the possession or can be reasonably obtained by Seller. Seller hereby acknowledges that any delay delivering the due diligence items set forth in this Section 2 shall have a material adverse impact on Buyer's ability to complete its review of the Real Estate on or before the expiration of the Due Diligence Period and, therefore, the Due Diligence Period shall not be deemed to commence until: (i) Seller delivers written notice to Buyer of Seller's completed delivery of the items set forth in Section 2; and (ii) within Forty-eight (48) hours from Buyer's receipt of the notice, Buyer shall either deliver a written notice to Seller of any items that it has not received and the commencement date for the Due Diligence Period shall be extended until Seller delivers the item(s) to Buyer or if Buyer does not deliver such a notice to Seller then Buyer and Seller hereby agree and acknowledge that Seller has complied with Section 2 and the Due Diligence Period shall commence.

(e) Title Review. Buyer, at its cost upon receipt of the Due Diligence Documents, shall obtain a title report to assure Buyer that there are no defects in title nor impediments which would, to Buyer's sole satisfaction, impact Seller's ability to transfer to

Buyer good and marketable title. Upon receipt of such title report, Buyer shall have Ten (10) days within which to review such title report and either terminate the Purchase Agreement or waive any further exceptions concerning such title report to proceed to Closing.

(f) Clearing Real Property. Prior to Closing, Seller removing all debris including motor vehicles, parts of motor vehicles, and other portable tangible property from the Real Estate.

(g) Termination. If any of the above contingencies are not met to Buyer's satisfaction within the time required, Buyer may terminate this Agreement. Upon termination of this Agreement, the Down Payment held by the escrow agent shall be released and returned to Buyer and this Agreement shall be extinguished and both parties released entirely from any obligations under the terms and conditions of this Purchase Agreement.

2.2 Liabilities Not Assumed. Notwithstanding any other provision of this Agreement, and except for any obligation expressly assumed by Buyer pursuant to this Agreement, Buyer shall not assume, and Seller shall retain and be responsible for, any liability, obligation, duty, claim or contract of Seller.

2.3 Representations, Warranties and Covenants of Seller. Seller hereby makes the following representations, warranties and covenants to Buyer:

(a) Seller owns fee simple title to the Real Estate and there are no recorded or unrecorded agreements, restrictions and/or covenants that prohibit certain uses at the Real Estate by Buyer.

(b) Seller has been duly incorporated, organized or formed, whichever is applicable, in good standing and validly exists in the State of Ohio where it is incorporated, organized or formed. Seller has the full right and authority and has obtained all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

(c) There is no agreement to which Seller is a party or to Seller's knowledge binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to its knowledge, threatened against Seller or the Real Estate, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.

(d) All Parking Spaces identified on the Real Estate are exclusively used in connection with the Real Estate. The Parking Spaces and the Real Estate access to the above-referenced roadway are not subject to any recorded or, to Seller's knowledge, unrecorded shared parking and/or access agreements. There are no recorded or, to

Seller's knowledge, unrecorded agreements, documents, instruments or easements, including, but not limited to, the ingress/egress easement that encumbers the Real Estate. The Building and all other improvements located on the Real Estate, including, but not limited to, any concrete or asphalt parking area or driveway, do not encroach onto any neighboring parcels of land.

(e) There are no occupancy rights, leases or tenancies affecting the Real Estate, the Real Estate is not subject to any right of first refusal or other purchase right in favor of any other person or entity, and apart of this Agreement, Seller has not entered into any written agreements for the purchase or sale of the Real Estate or any interest therein that has not been terminated. Seller covenants that it shall not place or consent to the placement by others of any easements, covenants, restrictions or encumbrances in respect of all or any part of the Real Estate or otherwise affect the state of title to such Real Estate without obtaining Buyer's prior written consent

(f) Seller hereby covenants that between the Effective Date and the Closing, Seller shall not, without Buyer's prior written consent: (i) enter into any lease, license agreement or other occupancy agreement with respect to any Real Estate; and/or (ii) cause, permit or consent to an alteration of the Real Estate demised thereunder (unless such consent is non-discretionary). Seller shall promptly inform Buyer in writing of any material event adversely affecting the ownership, use, occupancy or maintenance of any Real Estate, whether insured or not, of which Seller shall become aware.

(g) To its knowledge, with the exception of the roofing materials used in construction of the roof on the Building on the Real Property, there is no asbestos or lead paint constructed, deposited, stored, disposed of or location the Real Estate and there are no underground improvements, including but not limited to, treatment or storage tanks, including oil storage tanks, sumps or water, gas or oil wells and tanks, and in-ground hoists, located on the Real Estate.

(h) To its knowledge, there is not constructed, placed, deposited, stored, disposed of or located on the Real Estate any polychlorinated biphenyls ("PCB's") or transformers, capacitors, ballasts or other equipment that contains dielectric fluid containing PCB's. Buyer hereby acknowledges that the foregoing representation does not include any transformers, capacitors or ballasts that were erected on the Real Estate by any other party. To its knowledge, there is not constructed, placed, deposited, stored, disposed of or located on the Real Estate any insulating material containing urea formaldehyde.

(i) Seller has not engaged in or permitted any operations or activities upon, or any use or occupancy of the Real Estate, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Substances (as hereinafter defined) (whether legal or illegal, accidental or intentional) on, under, in or about the Real Estate, nor to its knowledge are any Hazardous Substances presently constructed, deposited, stored or otherwise located on, under, in or about the Real Estate,

nor to its knowledge have any Hazardous Substances migrated from the Real Estate upon or beneath other properties, nor to its knowledge have any Hazardous Substances migrated or threatened to migrate from other properties upon, about or beneath the Real Estate. The term "Hazardous Substances", as used in this Agreement, shall mean, without limitation, flammable explosives, radioactive materials, asbestos, formaldehyde foam insulation, polychlorinated biphenyls, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials of any kind or in any form, as defined in any applicable state, federal or law and the regulations promulgated thereunder.

(j) Seller has not received notice or other communication concerning any alleged violation of Environmental Requirements, whether or not corrected to the satisfaction of the appropriate authority, or notice or other communication concerning alleged liability for environmental damages in connection with the Real Estate, and to its knowledge there exists no writ, injunction, decree, order or judgment outstanding, or any lawsuit, claim, proceeding, citation, directive, summons or investigation pending or threatened, relating to the ownership, use, maintenance or operation of the Real Estate by any person or from any alleged violations of environmental requirements, or from the suspected presence of Hazardous Substances thereon, nor to the knowledge of the Seller, does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed. "Environmental Requirements" is defined as all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises and similar items, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, State of Ohio, whichever is applicable, and the political subdivisions thereof, and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: (i) all requirements, including, but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation or emissions, discharges, releases or threatened releases of Hazardous Substances, chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes, whether solid, liquid or gaseous in nature; and (ii) all requirements pertaining to the protection of the health and safety of employees or the public.

(k) Seller will, up to an amount equal to the Purchase Price, indemnify, defend and hold Buyer harmless from and against any and all claims, demands liabilities, damages, suits, actions, judgments, fines, penalties, loss, cost and expense (including without limitation, attorneys' fees) arising or resulting from, or suffered, sustained or incurred by Buyer as a result (direct or indirect) of the untruth of any of the foregoing matters represented and warranted by Seller to Buyer or the breach of any of the foregoing covenants and warranties of Seller, which indemnity shall survive the transfer of title hereunder and survive for a period of not less than Twelve (12) months thereafter.

All of the foregoing covenants, representations and warranties shall be true and correct at the time of transfer of title hereunder and shall survive the transfer of title.

2.4 **Other Agreements.** Seller shall not enter into or amend any agreement with respect to all or any part of the Real Estate, which would be binding upon Buyer without obtaining Buyer's prior written consent.

2.5 **Easements.** Seller shall not place or consent to the placement by others of any easements, covenants, restrictions or any other encumbrances in respect of all or any part of the Real Estate or otherwise affect the state of title to the Real Estate or the Building without obtaining Buyer's prior written consent.

2.6 **Apportionments.** The following are to be apportioned as of the close of business on the day of the Closing: Current taxes, if any, shall be apportioned on the basis of the current tax year and allocated at Closing based upon taxes collected in advance from Tenant; and

SECTION 3 **CLOSING**

3.1 **Closing.** The Closing shall be an escrow-style closing, where the Escrow Agent shall be the recipient of all documents and funds and shall disburse the same pursuant to this Agreement and the Settlement Statement (as hereinafter defined). The date of the Closing for this Agreement shall take place Thirty (30) Days from the date that Buyer satisfies or waives all of the conditions and contingencies contained in this Agreement (the "Closing"), but such Closing shall occur no less than Ninety (90) days after the approval of the Community Revitalization Grant as noted in Paragraph 2.1(b) above unless extended by mutual agreement of both parties. Notwithstanding the foregoing, Buyer may select an earlier date for the Closing whether before or after the date set for satisfying all the conditions and contingencies contained in this Agreement.

3.2 **Seller's Closing Obligations.** At least Three (3) days before the Closing (unless required earlier as set forth herein), Seller shall deliver the following items to the Escrow Agent the following:

(a) **Deed.** The Deed executed by Seller, the signature being witnessed and acknowledged as may be required.

(b) **Local, State and Federal Law Disclosures.** Such disclosures and reports as are required by applicable local, state and federal law in connection with the conveyance of real property.

(c) **FIRPTA.** A Foreign Investment in Real Property Tax Act affidavit executed by Seller.

(d) Certification of Seller's Warranties. A certificate by Seller's principal certifying that Seller's Warranties contained in this Agreement are true and correct as of the date of the Closing.

(e) Additional Documents. Any additional documents that the Escrow Agent or Buyer's lender may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

3.3 Buyer's Deliveries In Escrow. On or before the Closing, Buyer shall deliver in escrow to the Escrow Agent the following:

(a) Purchase Price. The Purchase Price, minus the Down Payment and plus or minus applicable apportionments, deposited by Buyer with the Escrow Agent in immediate, same-day federal funds wired for credit into the Escrow Agent's escrow account.

(b) Local, State and Federal Law Disclosures. Such disclosures and reports as are required by applicable state and federal law in connection with the conveyance of real property.

(c) Additional Documents. Any additional documents that the Escrow Agent or Buyer's lender may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

SECTION 4 MISCELLANEOUS

4.1 Survival of Representations and Warranties. Each of the parties hereto covenants and agrees that its representations and warranties contained in this Agreement and in any document delivered or to be delivered pursuant to this Agreement and in connection with the Closing hereunder shall survive twelve (12) months from the Closing, unless specifically stated otherwise herein.

4.2 Default Provisions & Remedies.

(a) Default by Buyer. If Buyer shall default in its obligation to close hereunder, Buyer agrees that Seller shall have the right to have the Escrow Agent deliver whatever portion of the Down Payment the Escrow Agent is then holding to Seller as full and complete liquidated damages and as the exclusive and sole right and remedy of Seller (collectively, the "Damages"), whereupon this Agreement shall terminate and neither Party shall have any further obligations or liabilities to any other party. The Damages to which Seller may be entitled under this Agreement are a reasonable forecast of just compensation for the harm that would be caused by Buyer's default of this Agreement, that the harm that would be caused by such breach is one that is incapable or very difficult of accurate estimation, and that payment of the Damages upon such breach shall constitute full satisfaction of Buyer's obligations under this Agreement, that

the above provisions are reasonable in light of the intent of the parties and the circumstances surrounding the execution of this Agreement, and that Buyer's respective rights and remedies shall be limited as set forth in this Section 4.2(a).

(b) **Default by Seller.** If Seller defaults in its obligation to sell and convey the Real Estate to Buyer pursuant to this Agreement, Buyer's remedy shall be the following: (a) to terminate this Agreement, in which event Buyer shall be entitled to the return of the Down Payment and reimbursement for all third-party expenses incurred by Buyer in connection with the transaction contemplated by this Agreement as evidenced by invoices from such third parties, including environmental site assessment, appraiser, engineer, bank and attorneys' fees; and/or (b) to bring a suit for specific performance to compel Seller to perform pursuant to this Agreement.

(c) **Notice and Cure Period.** Notwithstanding anything to the contrary in Sections 4.2(a) and 4.2(b), the non-defaulting party shall deliver written notice to the defaulting party of any default and the defaulting party shall have Ten (10) days to cure such default.

(d) In the event that either party sues for specific performance, then the prevailing party shall be entitled to reimbursement from the non-prevailing party all reasonable attorney's fees, court costs and disbursements incurred in connection with such litigation by the prevailing party.

4.3 Risk of Loss. The risk of loss or damage to the Real Estate by fire or other casualty, or by taking by eminent domain, until delivery of the deed as herein provided, shall be assumed by Seller unless caused by the acts or omissions of Buyer or its agents. In the event of (a) damage to the Real Estate (unless caused by the acts or omissions of Buyer or its agents) by insured casualty of five percent (5%) or more (on a square footage basis) of the improvements prior to the date of Closing or (b) any damage or loss to all or any part of the Real Estate by an uninsured risk or condemnation (unless caused by the acts or omissions of Buyer or its agents), Buyer, at its sole option, shall have the right to terminate this Agreement, upon written notice to the Seller given on or prior to the Closing, in which event the Down Payment shall be promptly returned to Buyer by Escrow Agent and, except as otherwise provided for in this Agreement, neither party shall have any further obligations or liabilities to the other. If, however, Buyer shall elect to proceed to Closing, the insurance proceeds and/or condemnation awards, as well as any unpaid claims or rights in connection with such casualty or any condemnation, shall be assigned to Buyer at Closing or, if paid to Seller prior to Closing, shall be credited to Buyer at Closing against the Purchase Price.

4.4 Insurance. As of the Effective Date, Seller has in force a policy of hazard insurance covering the Real Estate and public liability insurance with respect to the Real Estate providing for a single limit of liability in an amount at least equal to the Purchase Price for both death of or injury to a person and for property damage and such other insurance or the amounts required under the Lease (collectively, the "**Insurance Coverage**"), all of which shall be maintained in effect until Closing. Seller shall maintain the Insurance Coverage until Closing in an amount at least sufficient to avoid operation

4.9 **Assignability**. This Agreement shall be freely assignable by Buyer without the consent of Seller prior to or at the Closing. This Agreement shall not be assignable by Seller.

4.10 **Applicable Law**. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Ohio.

4.11 **Section and Other Headings**. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

4.12 **Counterparts and Time for Signatures**. This Agreement may be executed in any number of facsimile and/or email/electronic transmitted counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

4.13 **FIRPTA**. Seller represents that Seller is not a "foreign person", as defined in Internal Revenue Code Section 1445 and regulations issued thereunder and will provide an affidavit to that effect at Closing.

4.14 **Brokerage**. Both Seller and Buyer acknowledge that there are no brokers nor agents representing either party to whom a commission may be due from the sale of this Real Estate.

4.15 **Exclusivity**. From and after the Effective Date and until the earlier of the Closing or the termination of this Agreement, Seller hereby agrees and covenants that Seller will not directly or indirectly negotiate with any person other than Buyer for the purchase of Real Estate. Provided, however Seller must publish that any sale is pending or under contract in any listing or advertisement. Seller hereby acknowledges that any default of this Section 4.15 shall constitute a material default of this Agreement and Section 4.2(c) shall not apply to such a default.

4.16 **Waiver Modification**. Failure by Buyer or Seller to insist upon or enforce any of its rights hereto shall not constitute a waiver or modification thereof.

4.17 **Construction**. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof. Where the context requires, the masculine, feminine and neuter genders may be substituted for one another, as may be the singular for the plural number, and vice versa. INASMUCH AS THIS AGREEMENT IS THE RESULT OF NEGOTIATIONS BETWEEN SOPHISTICATED PARTIES OF EQUAL BARGAINING POWER, NO INFERENCE IN FAVOR OF OR AGAINST EITHER PARTY WILL BE DRAWN FROM THE FACT THAT ANY PORTION OF THIS AGREEMENT HAS BEEN DRAFTED BY OR ON BEHALF OF SUCH PARTY. EACH PARTY HEREBY ACKNOWLEDGES THAT IT HAS BEEN GIVEN AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTING THIS AGREEMENT.

4.18 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Real Estate is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. EST.

4.19 Further Assurances. Each party will execute, acknowledge and deliver such documents and instruments that are reasonably requested and customary to the transactions contemplated by this Agreement by the other party, and will take any other action consistent with the terms of this Agreement that may reasonably be requested by any other party, for the purpose of giving effect to the transactions contemplated by this Agreement. The obligations of the parties pursuant to this Section 4.19 shall survive the Closing.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the dates listed below, and this Agreement shall be effective as of the Effective Date.

SELLER:

Shepherd Real Estate, LLC
an Ohio limited liability company

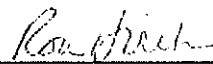
By: 
Roger A. Bien

Its:

Date: 2/15/22

BUYER:

Village of Golf Manor, Ohio
an Ohio municipal corporation

By: 
Ron Hirth

Its: Village Administrator

Date: 2/15/2022

APPROVED AS TO FORM:


Terrence M. Donnellon, Solicitor

AMENDMENT TO PURCHASE AND SALE AGREEMENT

WHEREAS, Shepherd Real Estate, LLC as Seller, and the Village of Golf Manor, Ohio as Buyer, entered into a Purchase and Sale Agreement dated February 15, 2022, to enable the Buyer to acquire from the Seller certain Real Estate identified as 6516 Wiehe Road; and

WHEREAS, during inspection of the Real Estate, it was noted that the Real Estate at 6516 Wiehe Road, while encompassing one Building, is two separate Auditor parcel lots, being Auditor's parcel numbers 528-0004-0393 and 528-0004-0394; and

WHEREAS, to complete the Community Revitalization Grant Funding to acquire the Real Estate and remove the blight, it is necessary for the parties to clarify the Purchase and Sale Agreement to note that the Real Estate being acquired at the total Purchase Price of One Hundred Fifty Thousand Dollars (\$150,000) includes the entire structure identified as 6516 Wiehe Road, and Auditor's parcel numbers 528-0004-0393 and 528-0004-0394.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and the consideration as set forth in the original Purchase and Sale Agreement dated February 15, 2022, the parties do amend the Purchase and Sale Agreement as follows:

1. The Purchase Price of One Hundred Fifty Thousand Dollars (\$150,000) to be paid for the Real Estate include the Buildings and Improvements located at 6516 Wiehe Road and both underlying lots being Auditor's parcel numbers 528-0004-0393 and 528-0004-0394, which combined encompass approximately .316 acres and a 9,911 square foot industrial building located thereon on the combined acreage.

2. Consistent with the terms of the Purchase and Sale Agreement, at Closing Seller shall convey to Buyer by Limited Warranty Deed the land and improvements identified as Auditor's parcel numbers 528-0004-0393 and 528-0004-0394.

3. Seller has completed their due diligence and obtained an acceptable environmental assessment of the Real Estate and is ready to proceed to Closing. The environmental assessment has identified what is suspected to be asbestos containing materials, but Buyer shall assume the responsibility to appropriately maintain, demolish and dispose of those materials as part of the demolition of the improvements on site after acquiring the Real Estate.

4. Consistent with the terms of the original Purchase and Sale Agreement, Buyer shall remove all debris, including motor vehicles, parts of motor vehicles and other portable tangible property, from the Real Estate on or before the Closing, which Closing the parties agree to set on or before September 30, 2022 at the offices of Central Land Title, 3074 Madison Road, Cincinnati, Ohio 45209, or such other convenient location as the parties may agree. No less than Two (2) days prior to Closing, Seller shall allow the Buyer to visually

Reb

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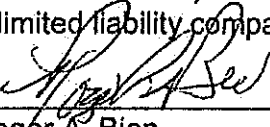

inspect the interior of the Buildings on the Real Estate to assure that the terms and conditions of Paragraph 2.1(f) have been satisfied.

5. All other terms and conditions of the Purchase and Sale Agreement dated February 15, 2022 are hereby reaffirmed.

IN WITNESS WHEREOF, the undersigned have duly executed this Amendment to Purchase and Sale Agreement as of the dates listed below.

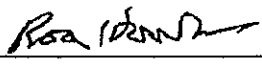
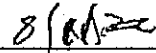
SELLER:

Shepherd Real Estate, LLC
an Ohio limited liability company

By: 
Roger A. Bien
Its: Managing Member
Date: 

BUYER:

Village of Golf Manor, Ohio
an Ohio municipal corporation

By: 
Ron Hirth
Its: Village Administrator
Date: 

APPROVED AS TO FORM:


Terrence M. Donnellon, Solicitor