

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN ADDENDUM TO AGREEMENT OF SALE OF CITY PROPERTY LOCATED AT 23550 COMMERCE PARK, BEACHWOOD, OHIO; AND DECLARING THIS TO BE AN URGENT MEASURE

WHEREAS, the City of Beachwood owns a property located at 23550 Commerce Park, Beachwood, Ohio; and

WHEREAS, Industrial Commercial Properties, LLC desires to purchase the Property for the purpose of development; and

WHEREAS, the parties entered into an Agreement of Sale dated November 17, 2020, for Seller's sale of the Property to Buyer; and

WHEREAS, it is necessary to make certain amendments to the Agreement of Sale for the following reasons:

- 1) Additional time is necessary for the required lot split to be prepared and approved by the City;
- 2) The Parties have agreed to restructure payment of the Purchase Price;
- 3) The Seller is in need of additional time to vacate part of the Property requiring agreement by the Parties; and
- 4) The Buyer would like possession to part of the Property prior to closing requiring agreement by the Parties.

WHEREAS, the Parties now wish to amend the terms of the Agreement of Sale to reflect the provisions set forth above.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Beachwood, County of Cuyahoga and State of Ohio, that:

Section 1: The Mayor is hereby authorized to enter into an Addendum to the Agreement of Sale for the sale of the property located at 23550 Commerce Park, Beachwood, Ohio to Industrial Commercial Properties, LLC. Said Agreement of Sale shall be in a form substantially similar to the form set forth in Exhibit "A", a copy of which is attached hereto and incorporated herein and as approved by the Director of Law.

Section 2: It is found and determined that all formal actions and deliberations of Council and its committees relating to the passage of this legislation that resulted in formal action were in meetings open to the public where required by Chapter 105 of the Codified Ordinances of the City.

Section 3: This Ordinance is hereby declared an urgent measure which is immediately necessary for the public peace, health or safety or the efficient operation of the City, and for the further reason that the property can be put to a more beneficial use at the earliest possible time; wherefore this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

WHEREFORE, this Ordinance shall be in full force and effect from and after the earliest date permitted by law.

Attest: I hereby certify this legislation was duly adopted on the 1st day of March, 2021, and presented to the Mayor for approval or rejection in accordance with Article III, Section 8 of the Charter on the 2nd day of March, 2021.

Clerk

Approval: I have approved this legislation this 2nd day of March, 2021, and filed it with the Clerk.

Mayor

**FIRST ADDENDUM TO
AGREEMENT OF SALE**

THIS FIRST ADDENDUM TO AGREEMENT OF SALE (this “**Addendum**”) is dated and entered into as of the ____ day of March, 2021 (the “**Effective Date**”), by and between the CITY OF BEACHWOOD, as seller (“**Seller**”), and INDUSTRIAL COMMERCIAL PROPERTIES LLC, an Ohio Limited Liability corporation, or its nominee or assignee, as Buyer (“**Buyer**” and collectively with Seller, the “**Parties**”).

RECITALS:

WHEREAS, Seller is the owner of certain real property located in the City of Beachwood, County of Cuyahoga, State of Ohio, located at 23550 Commerce Park, Beachwood, Ohio and known as a portion of Parcel No. 742-22-022 (the “Overall Property”), and Seller is selling to Buyer a portion of the Overall Property containing approximately 8.6618 acres of land, together with all improvements thereon and appurtenances thereto, which shall be subdivided from the Overall Property at or prior to Closing (collectively, the “Property”); and

WHEREAS, the parties entered into an Agreement of Sale dated November 17, 2020, for Seller’s sale of the Property to Buyer; and

WHEREAS, it is necessary to make certain amendments to the Agreement of Sale for the following reasons:

- 1) Additional time is necessary for the required lot split to be prepared and approved by the City;
- 2) The Parties have agreed to restructure payment of the Purchase Price;
- 3) The Seller is in need of additional time to vacate part of the Property requiring agreement by the Parties; and
- 4) The Buyer would like possession to part of the Property prior to closing requiring agreement by the Parties.

WHEREAS, the Parties now wish to amend the terms of the Agreement of Sale to reflect the provisions set forth above.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Parties hereby expressly agree to amend Section 10.1 of the Agreement of Sale and extend the Closing Date to a date not later than April 15, 2021.
2. The Parties hereby expressly agree to amend and replace Section 3.2(B) in its entirety to read as follows:

On the Closing Date (as defined in Section 10.1), Seller shall loan Buyer an amount equal to the Purchase Price, subject to the execution of an agreeable Mortgage and Note between the Parties and recording of such Mortgage.

3. The Parties hereby expressly agree to amend and replace Section 7.1 of the Agreement of Sale in its entirety to read as follows:

Possession. Seller shall deliver exclusive possession of the Property in a broom-clean condition to Buyer immediately after Closing on the Closing Date. Notwithstanding the above, Seller shall maintain possession of a portion of the Property, the size and location of which is to be mutually agreed upon by the Parties prior to Closing, through September 1, 2021 (the “Leaseback Space”). The Parties agree to use good faith efforts to agree upon the terms of a Leaseback Agreement for the Leaseback Space prior to Closing (the “Leaseback Agreement”). The Leaseback Agreement shall be executed by the Parties at Closing. Furthermore, and notwithstanding the above, Buyer shall have immediate access and possession, as of the execution of this Addendum, to a portion of the Property, the location of which is to be mutually agreed upon by the Parties prior to Buyer’s access of such portion of the Property (the “Early Access Space”). Buyer and Seller shall enter into an indemnification and hold harmless agreement prior to Buyer taking possession of Early Access Space.

4. The Parties hereby expressly agree to amend and replace Sections 10.3(A) and 10.3(B) of the Agreement of Sale in its entirety to read as follows:

(A) Seller will at Closing deliver or effect the following:

- (i) Delivery to Buyer of the Deed to the Property;
- (ii) Seller’s executed counterpart to the REA;
- (iii) Seller’s executed counterpart to the Leaseback Agreement;
- (iv) Seller’s executed counterpart to the Mortgage; and
- (v) Such other and further documents and/or deliveries as may reasonably be required by Buyer and Title Company to enable Seller to perform its obligations hereunder.

(B) Buyer will at Closing deliver or effect the following:

- (i) Buyer’s executed counterpart to the REA;
- (ii) Buyer’s executed counterpart to the Leaseback Agreement;
- (iii) Buyer’s executed counterpart to the Mortgage;

- (iv) Delivery to Seller of the executed Note; and
- (v) Such other and further documents and/or deliveries as may reasonably be required by Seller and Title Company to enable Buyer to perform its obligations hereunder.

5. This Addendum shall amend the Agreement of Sale entered into between the Parties hereto in connection with Buyer's agreement to purchase the Property from the Seller. Except as expressly amended hereby, all of the terms, conditions and provision in the Agreement of Sale shall remain in full force and effect.

[The remainder of the page is intentionally left blank. Signature page(s) follow.]

IN WITNESS WHEREOF, Seller and Buyer have caused this First Addendum to the Agreement of Sale to be executed as of the date first written above.

Seller:

CITY OF BEACHWOOD, OHIO,
an Ohio municipality

By: _____
Name: _____
Title: _____

Buyer:

INDUSTRIAL COMMERCIAL PROPERTIES
LLC,
an Ohio limited liability company

By: _____
Name: _____
Title: _____