

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT (the “**Amendment**”) is made effective as of this ____ of June, 2019 (the “**Effective Date**”), by and between the **MAYOR AND ALDERMAN OF THE CITY OF SAVANNAH**, a municipal corporation organized under the laws of the State of Georgia (“**Seller**”), and **COLUMBIA VENTURES, LLC**, a Georgia limited liability company (“**Purchaser**”). Seller and Purchaser are sometimes referred to hereinafter as the “parties.”

RECITALS

WHEREAS, Seller and Purchaser have executed that certain Purchase and Sale Agreement dated November 19, 2018, as amended by that certain First Amendment dated March 14, 2019, as amended again with a Second Amendment dated May 21, 2019 (as amended, the “Agreement”) with for the sale by Seller and the acquisition by Purchaser, of the Property located at 132 East Broughton Street, Savannah, Georgia (as more particularly defined in the Agreement); and

WHEREAS, the Property was declared surplus and available for sale by the Mayor and Aldermen of the City of Savannah on August 31, 2017; and

WHEREAS, the Mayor and Aldermen of the City of Savannah issued a Request for Proposals (RFP) soliciting proposals and sealed bids from the public for sale of the Property on March 20, 2018; and

WHEREAS, the solicitation for RFPs closed on June 19, 2018 and one proposal and sealed bid was received, which was submitted by the Purchaser; and

WHEREAS, the proposal submitted by Purchaser involved redevelopment of the Property with uses that include a hotel with restaurant, bar, and other amenities (the “**Proposed Use**”); and

WHEREAS, the Mayor and Aldermen accepted the proposal and awarded the sale of the Property to Purchaser on August 16, 2018 and the contract governing this sale was finalized and executed on November 19, 2018; and

WHEREAS, upon execution of the Agreement, Purchaser deposited the \$225,000.00 Earnest Money Deposit with the Escrow Agent as security for the Parties involves; said Earnest Money Deposit is now deemed non-refundable (except in the case of a Seller default or as otherwise expressly set forth in the Agreement); and

WHEREAS, subsequent to the Mayor and Aldermen accepting Purchaser’s proposal, awarding the sale of the Property to Purchaser, and entering into the Agreement governing that transaction, Section 8 – 3030 of the City Code of Ordinances was amended before the Purchaser could finalize and submit its design and construction plans for permitting/approvals associated with the Property and Proposed Use; and

WHEREAS, Purchasers application to the Historic District Board of Review is scheduled to be considered by that board on June 12, 2019; and

WHEREAS, Seller and Purchaser desire to amend the terms of the Agreement, on and subject to the terms and conditions hereafter set forth.

WITNESSETH

NOW THEREFORE, in consideration of the covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Capitalized Terms and Recitals. The parties confirm the accuracy of the recitals set forth above. Each capitalized term used in this Amendment as a defined term that is not otherwise defined in this Amendment shall have the meaning ascribed to it in the Agreement.

2. Deemed Grandfathered and Exempt. Given the history of events and recitals preceding, The Mayor and Aldermen of the City of Savannah deem the Property and Proposed Use grandfathered and exempt from the subsequent revisions to Section 8 – 3030 of the Code of Ordinances which occurred after acceptance of the Proposed Use and effective date of the Agreement for purchase and sale. Such “grandfathered” status and exemption shall expressly include Purchaser’s construction and operation of a bar, lounge area and related amenities to be located on the rooftop deck of the hotel (collectively, the “Rooftop Amenities”). Notwithstanding the aforementioned, Purchaser acknowledges and agrees that while the The Mayor and Aldermen of the City of Savannah has taken such position regarding the “grandfathered” status described herein and has informed Purchaser of their position, Seller has no control whether third parties may challenge and/or appeal such position and whether a court or other third parties may determine such “grandfathered” status to be either overruled, voided or unlawful. Therefore, the Purchaser acknowledges and agrees that while The Mayor and Aldermen of the City of Savannah has taken the position regarding the “grandfathered” status described herein, the Purchaser is proceeding with the purchase of the Property at its owns risk and will indemnify and hold harmless Seller from any loss, damage (including, without limitation, direct, punitive and consequential damages), demands, claims, causes of action, debts or obligations, costs and expenses (including reasonable attorney’s fees and costs of litigation) of any kind, arising from or in any way related to the “grandfathered” status described herein being overruled, voided or found to be unlawful by a court or third party.

3. Closing Date Extension. Section 6.1 is hereby deleted in its entirety and replaced with the following new Section 6.1:

“6.1 Closing. Unless the parties mutually agree upon another time or date, the closing (the “Closing” or the “Closing Date”) shall be held by means of a so-called “mail-away escrow closing” at the office of Escrow Agent no later than 2:00 p.m. on June 19, 2019.”

4. Exhibit H. Section 4(a) of Exhibit H is hereby deleted in its entirety and replaced with the following:

5. “(a) Simultaneously with the execution of this Agreement, Owner and the City shall execute (i) a recordable Memorandum of Option and Right of First Refusal in substantially the form attached hereto as Schedule 2, which the City may record at the City’s expense in the County wherein the Property is located (the “**Memorandum of Option**”), and (ii) a recordable Notice of Termination and Quitclaim Deed (the “**Termination Agreement**”) in the form attached hereto as Schedule 3, releasing any and all interests of the City in the Property, which Termination Agreement shall be held, distributed and/or recorded (as applicable) by the Escrow Agent in accordance with the terms of this Agreement. In the event that either (i) the Commencement of Construction occurs without the City having exercised the Purchase Option or the Refusal Option, or (ii) despite the provisions of Section 2 of this Amendment to the contrary, Owner is unable to obtain all permits, variances, and other governmental approvals required for construction and operation of the Rooftop Amenities, then all rights of the City under this Agreement shall lapse, terminate and shall be of no further force and effect. Following the Commencement of Construction or the termination of this Agreement for any reason, Owner may, by written notice to the City and the Escrow Agent, instruct the Escrow Agent to record the Termination Agreement against the Property. In addition, at the time of the termination of the Purchase Option and the Refusal Option, the City shall execute and record any other documents evidencing such termination that are reasonably requested by Owner.”

6. Earnest Money. In consideration of the terms and covenants set forth in this Agreement, within two (2) business days after full execution of this Amendment, Purchaser shall deposit with Escrow Agent an additional \$50,000 Earnest Money Deposit (the “**Additional Deposit**”), which shall be deemed nonrefundable upon receipt, except in the case of a Seller default or as expressly set forth in the Agreement. The Additional Deposit shall be deemed to be and shall be treated in all respects as part of the Earnest Money Deposit for purposes of the Agreement.

7. Miscellaneous. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, successors-in-title, representatives and permitted assigns. In the event of any inconsistency or conflict between the terms of this Amendment and of the Agreement, the terms of this Amendment shall control. Time is of the essence of all of the terms of this Amendment. The Agreement, as amended by this Amendment, constitutes and contains the sole and entire agreement of the parties hereto with respect to the subject matter hereof and no prior or contemporaneous oral or written representations or agreements between the parties and relating to the subject matter hereof shall have any legal effect. Except as hereinabove provided, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect, and are hereby ratified and confirmed by the parties hereto. This Amendment may not be changed, modified, discharged or terminated orally in any manner other than by an agreement in writing signed by Seller and Purchaser or their respective heirs, representatives, successors and permitted assigns. This Amendment may be signed in multiple counterparts, which, when taken together, shall constitute a fully executed and binding original Amendment. Electronic counterparts of this Amendment as executed by the parties shall be deemed and treated as executed originals for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement as of the day and year first above written.

SELLER:

Mayor and Aldermen of the City of Savannah

By: _____
Pat Monahan, Acting City Manager

PURCHASER:

Columbia Ventures, LLC,
a Georgia limited liability company

By: _____
Name: _____
Title: _____