

**THIRD AMENDMENT TO
AGREEMENT FOR PURCHASE AND SALE**

*Murdock Village Community Redevelopment Agency
Lost Lagoon Development, LLLP
Charlotte County*

This **THIRD AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE** (the “Third Amendment”) is dated the ___ day of _____, 2020 and is entered into by and between: the **Murdock Village Community Redevelopment Agency**, a public body corporate and politic under the laws of the State of Florida, established pursuant to Part III of Chapter 163, Florida Statutes, (the “**MVCRA**” or “**Seller**”); and, **Lost Lagoon Development, LLLP**, a Florida limited liability limited partnership, (“**Lost Lagoon**” or “**Buyer**”); and, **Charlotte County**, a political subdivision of the State of Florida (“**County**”); and, collectively, the parties to this agreement shall be referred to as the “parties.”

RECITALS

A. MVCRA, Lost Lagoon and County entered into that certain AGREEMENT FOR PURCHASE AND SALE dated October 24, 2017, (the “Agreement”), as amended by that certain FIRST ADDENDUM AND AMENDMENT TO PURCHASE AND SALE dated March 24, 2020 and that certain SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE dated April 14, 2020 (collectively, the “Agreement”); and

B. The Agreement, including amendments thereto, was approved by the MVCRA and the County at duly noticed, public meetings on or about October 24, 2017, March 24, 2020 and April 14, 2020, and the parties have been implementing the Agreement’s terms since those dates; and

C. Pursuant to the terms of the Agreement, the current Phase I Closing deadline is July 23, 2020; and

D. The parties desire to extend the Phase I Closing deadline set forth in the Agreement, subject to the conditions and requirements set forth in this Third Amendment.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in the Agreement and this Third Amendment, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties agree as follows:

1. **Recitals**. The Recitals above are incorporated into this Third Amendment by this reference.
2. **Phase I Deposit**. Buyer has deposited Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) in Current Funds in escrow with the Title Agent (WIDEIKIS, BENEDICT

& BERNTSSON, LLC) (the “Phase I Deposit”). As consideration for the extension of the Phase I Closing deadline provided herein, immediately upon execution of this Third Amendment, the Phase I Deposit shall be nonrefundable. However, assuming no termination by Buyer or as otherwise provided in Section 23 of the Agreement, the Phase I Deposit shall be applied against the Purchase Price for the Phase I Closing in accordance with the terms of the Agreement, including but not limited to Section 4.2 of the Agreement.

3. **Extended Phase I Closing Deadline.** Notwithstanding any provision to the contrary contained in the Agreement, the Phase I Closing under the Agreement is hereby extended and shall occur on or before **Monday, August 24, 2020** (the “Extended Phase I Closing Deadline”).

4. **Buyer Default.** If Buyer fails to close on Phase I on or before the Extended Phase I Closing Deadline due to Buyer’s default under the Agreement, in addition to the remedies set forth in Section 23 of the Agreement, Title Agent shall distribute to the County, and the County shall receive and retain, the Phase I Deposit from the Title Agent as further liquidated damages for loss of bargain and not as a penalty, it being agreed that in the event of Buyer’s default, the actual damages to County and MVCRA would be difficult if not impossible to ascertain and/or calculate. Notwithstanding any provision to the contrary in the Agreement, neither County nor MVCRA shall provide to Buyer written notice of a default under the terms of Section 23 of the Agreement, and a period of thirty (30) days to effect a cure of such default after receipt of such written notice thereof, if, and only if, such default is a failure to consummate the Phase I, II, III or IV closings as described in the Agreement.

5. **Existing Deposit.** As a point of clarification, this Third Amendment is not intended to, and does not, modify the Agreement as it specifically relates to the Deposit, defined in Section 1.10 of the Agreement and further described in Section 3.1 of the Agreement as the sum of \$250,000.00 in Current Funds deposited with Escrow Agent by Buyer. Said Deposit is nonrefundable as of March 25, 2020. The Deposit shall be applied and/or disbursed in accordance with the terms of the Agreement.

6. **Conflict.** The parties intend this Third Amendment to supplement the Agreement. Where one or more provisions of this Third Amendment or the Agreement may be read to fulfill the intent of both documents, the parties intend that this Third Amendment and the Agreement be interpreted to give each document its fullest meaning. Where the provisions of this Third Amendment and those of the Agreement directly conflict, the parties intend that this Third Amendment prevail. The parties intend that all other provisions of the Agreement not in conflict with this Third Amendment remain undisturbed.

7. **Counterparts.** This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument. Any party may execute this Amendment by signing any one counterpart.

8. **Ministerial Functions.** Except as herein specifically provided, the Title Agent's duties shall be purely ministerial in nature, and the Title Agent shall incur no liability whatsoever (except for willful misconduct or gross negligence) so long as the Title Agent acts in good faith. Buyer and Seller hereby unconditionally release Title Agent and Closing Agent from all liability associated with or resulting from any act done or omitted to be done in good faith and in the performance of the Title Agent's and Closing Agent's duties hereunder.

9. **Responsibility of the Title Agent.** The Title Agent shall be under no responsibility with regard to any of the monies deposited with the Title Agent other than to faithfully follow the instructions herein contained. The Title Agent shall not be required to defend any legal proceedings which may be instituted against the Title Agent with regard to the subject matter of these instructions, unless (i) requested to do so by the Seller or the Buyer, and (ii) only if the requesting party agrees to indemnify the Title Agent in writing, to the satisfaction of the Title Agent, against all costs and expenses of such defense and any losses or damage arising therefrom or associated therewith. The Title Agent shall not be required to institute legal proceedings of any kind. The Title Agent shall have no responsibility for the genuineness or validity of any document or other item deposited with the Title Agent and shall be fully protected by acting in accordance with any written instructions given to the Title Agent and believed by the Title Agent to have been signed by the proper parties and with proper authority, which Title Agent shall treat as written instructions from the Seller and Buyer.

10. **Disputes.** Title Agent assumes no liability under this Agreement except that of a stake holder. If there is any dispute as to whether the Title Agent is obligated to deliver the Escrow Funds or as to whom the funds are to be delivered, the Title Agent will not be obligated to make any delivery of the funds but in such event may hold the funds until the Title Agent receives written authorization signed by all persons having an interest in the dispute, directing the disposition of the funds, or in the absence of such written authorization, the Title Agent may hold the funds until the final determination of the rights of all interested parties in an appropriate interpleader proceeding for such determination. In the event such a proceeding is not begun and diligently continued, the Title Agent may, but is not required to, bring an appropriate action or proceeding in the nature of an interpleader. In all events, the initiation of an interpleader action shall relieve the Title Agent from any further liability with respect to the funds deposited in the interpleader action, and the parties agree to indemnify and hold the Title Agent harmless from any and all loss, cost, damage, or liability, including attorneys fees and costs in connection with the interpleader action.

11. **Limitations of Liability.** The Title Agent shall not be liable for any loss or damage resulting from the following:

- a. Any defects or conditions of title to any property, except those resulting from its own acts. No title insurance liability is created by this Agreement.
- b. Any defects in the property purchased, or the obligations or rights of any tenant or other party in possession, or any misrepresentations made by any party.

- c. Any default, error, action or omission of any party other than Title Agent (which shall be liable only for willful breach of this Escrow Agreement and for gross negligence in the performance of its duties hereunder.)
- d. The expiration of any time limit or other delay, unless such time limit was known to Title Agent, and such loss is solely caused by failure of Title Agent to proceed in the ordinary course of its business.
- e. Any good faith act or forbearance by the Title Agent.
- f. Any loss or impairment of funds deposited in escrow in the course of collection or while on deposit with a trust company, bank, savings bank or savings association resulting from failure, insolvency or suspension of such institution.
- g. The Title Agent complying with any and all legal process, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction, and whether or not subsequently vacated, modified, set aside or reversed.
- h. The Title Agent asserting or failing to assert any cause of action or defense in any judicial, administrative or other proceedings either in the interest of itself or any other party or parties.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on the respective dates set forth below.

WITNESSES:

Printed Name: _____

Printed Name: _____

LOST LAGOON/BUYER:

Lost Lagoon Development, LLLP, a Florida limited liability limited partnership

By: Lost Lagoon Management, LLC, its general partner

By: J-Tek Entertainment, Inc., its manager

By: _____
Lyndell Mims, its President

Date: _____

[ADDITIONAL SIGNATURES ON NEXT PAGE]

Signed, Sealed and Delivered in the Presence of:

COUNTY:
Board of County Commissioners of Charlotte County, Florida

By: _____
William G. Truex, Chairman

Attest:

Date: _____

Roger D. Eaton, Clerk of Circuit Court
And Ex-Officio Clerk of the Board of
County Commissioners

MVCRA/SELLER:

By: _____
Deputy Clerk

Board of County Commissioners of Charlotte County, Florida, a Political Subdivision of the State of Florida, as Ex-Officio of Murdock Village Community Redevelopment Agency

By: _____
William G. Truex, Chairman

Date: _____

Approved as to form and legal sufficiency:

By: _____
Janette S. Knowlton, County Attorney

LR16-0749 _____

[ADDITIONAL SIGNATURES ON NEXT PAGE]

Title Agent hereby acknowledges the terms of this Third Amendment and agrees to hold and disburse all Current Funds deposited with Title Agent in accordance with the terms of the Agreement and this Third Amendment.

WITNESSES:

Printed Name: _____

Printed Name: _____

TITLE AGENT:

WIDEIKIS, BENEDICT & BERNTSSON, LLC

By: _____

Print Name: _____

Its: _____

Date: _____