



CITY OF NOVI CITY COUNCIL
AUGUST 31, 2020

SUBJECT: Consideration to approve a fifth amendment to the previously-approved Conditional Agreement of Purchase and Sale on North Grand River City Property, located north of Grand River Avenue, east of Town Center Drive.

SUBMITTING DEPARTMENT: City Manager

BACKGROUND INFORMATION City Council is being asked to approve a Fifth Amendment to the above-referenced agreement. The purpose of the amendment is to extend the closing date by 6 months, from its current date of September 30, 2020 to March 31, 2021, with a corresponding change to the date by which the parties need to have the Conditions to Closing and the Development Conditions satisfied to be one month earlier, moving from August 31, 2020 to February 28, 2021.

The original agreement was entered into back on June 21, 2018, and had an outside date of 18 months after the effective date to satisfy all Conditions to Closing, including full Planned Rezoning Overlay (PRO) approval. There were a number of internal "target" dates for inspections and developmental approvals within that end date. These included dates for submission of development plans for the purchaser to seek approval of a brownfield redevelopment plan, and for the Purchaser to secure a commercial rehabilitation district.

City Council approved the Fourth Amendment back in December 2019 establishing the revised dates that are now being pushed back again. Council received detailed correspondence from the Purchaser in July setting forth the reasons why the dates need to be extended (largely Covid-19 related).

RECOMMENDED ACTION: Approve a fifth amendment to the previously-approved Conditional Agreement of Purchase and Sale on North Grand River City Property, located north of Grand River Avenue, east of Town Center Drive, and to authorize the Mayor and Clerk to sign the same, subject to final review and approval of the terms and conditions of the Purchase Agreement by the City Manager and City Attorney's office, including minor amendments thereto.

**FIFTH AMENDMENT TO
CONDITIONAL AGREEMENT OF PURCHASE AND SALE
NORTH GRAND RIVER CITY PROPERTY**

THIS FIFTH AMENDMENT TO CONDITIONAL AGREEMENT OF PURCHASE AND SALE (“**Amendment**”) is made as of _____, 2020 by and between the CITY OF NOVI, a Michigan municipal corporation (“**Seller**”), and SAKURA NOVI, LLC, a Michigan limited liability company (“**Purchaser**”), with regard to the following:

A. Seller and Purchaser entered into a certain Conditional Agreement of Purchase and Sale North Grand River City Property dated June 21, 2018 for the purchase and sale of the Anglin Parcel, as defined and described in the such agreement, as amended by that certain First Amendment dated November 2, 2018, that certain Second Amendment dated December 17, 2018, that certain Third Amendment dated April xx, 2019, and that certain Fourth Amendment dated December 20, 2019 (as amended, the “**Agreement**”).

B. The parties desire to amend the Agreement to extend certain dates in the Agreement, on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual agreements herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties amend the Agreement as follows:

1. Section 1(b) of the Agreement is hereby amended to read as follows:

(b) “Closing Date”: March 31, 2021. In the event all Conditions to Closing as set forth in Paragraph 6 are not satisfied or waived, in Purchaser’s sole and absolute discretion, and the Development Conditions in Paragraph 7 are also not satisfied or waived, by February 28, 2021, then this Agreement shall automatically terminate, whereupon the Deposit currently held by the Seller shall be promptly returned to Purchaser and this Agreement shall thereafter be of no further force or effect and all liability and obligations under this Agreement shall be terminated, unless the Seller and Purchaser stipulate in writing to extend the Closing to a date certain, in which case the date specified in that written stipulation shall be the Closing Date.

2. The fourth paragraph of Section 7(a) of the Agreement shall be amended to read as follows:

In the event the Parties comply in good faith with this provision, but the PRO is not approved by November 30, 2020, then at any time thereafter Purchaser may withdraw its PRO application and terminate this Agreement upon written notice to Seller and this Agreement shall be without further force and effect. Seller may also terminate this Agreement upon written notice to Seller on or before December 15, 2020 if the PRO is not approved by November 30, 2020 and this Agreement shall be without further force and effect. Seller makes no representation in this Agreement that the PRO

and PRO Agreement will be approved. Notwithstanding anything else in this Agreement, Seller retains all its right and discretion under applicable law and ordinances to approve, reject, or approve with conditions any proposed PRO and PRO Agreement, and this Agreement does not limit or waiver its zoning or police power authority in any way, including the relation of the proposed plans and improvements to adjacent properties and the existing and future or planned road rights-of-way. Seller's failure to approve the PRO Plan or the PRO Agreement shall not constitute a default or breach for the purposes of this Agreement.

3. The parties hereby confirm and ratify all provisions of the Agreement, which shall and do remain in full force and effect as amended hereby. This Amendment may be signed in counterparts, each of which will be deemed an original document, but all of which together will constitute one and the same document. Faxed and pdf scanned signatures shall be deemed original signatures for purposes of this Amendment. All capitalized, undefined terms in this Amendment shall have the same meaning as defined in the Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment to Conditional Agreement of Purchase and Sale North Grand River City Property on the date first above written.

PURCHASER:

SAKURA NOVI, LLC,
a Michigan limited liability company

By: _____
Geoffrey Scott Aikens, Trustee of
the Geoffrey Scott Aikens Trust
u/a/d December 10, 2011

SELLER:

CITY OF NOVI, MICHIGAN,
a Michigan municipal corporation

By: _____
Robert J. Gatt, Mayor

By: _____
Courtney Hanson, City Clerk