

COMMUNITY BENEFITS AGREEMENT (CBA)

This Community Benefits Agreement ("CBA") is entered into as of this 11th day of October 2024 by and between the City of Cleveland, through its Director of Economic Development ("City"), under the authority of Section 190A.03, Codified Ordinances of Cleveland, Ohio, 1976, ("C.O.") and Twain SLB III, LLC ("Owner"), with principal office at 2200 Washington Avenue, Saint Louis, MO 63103, through its authorized officer.

WHEREAS, the City of Cleveland recognizes that it has a unique role and responsibility regarding development projects undertaken within the City with City support, public funds and financial assistance to ensure that those projects directly benefit the communities in which they are built, that the projects benefit the entire community and that historically underrepresented minorities and women participate in the Cleveland economy by way of the building and construction trades and crafts and professional services; and

WHEREAS, to assure that the City's financial assistance and expenditures on Development Projects provide community benefits and economic impact equitably throughout the City and result in a "win-win" for both Cleveland residents and developers, the City enacted new Chapter 190A of its Codified Ordinances, **Community Benefits Agreements**; and

WHEREAS, under Section 190A.03, proposed Development Projects with an expected total Project cost over \$20,000,000 and City financial assistance equal to or greater than \$250,000 must enter into a Community Benefits Agreement with the City; and

WHEREAS, the project for which this CBA is entered into (the "Project") is estimated to have a total cost of approximately \$130,000,000 for which the following City financial assistance is anticipated pursuant to a TIF Agreement between the City and Developer (the "TIF Agreement"):

- | | |
|--|--------------------|
| • <u>Tax Increment Financing (TIF)</u> | <u>\$2,000,000</u> |
| • | \$ |

Total \$2,000,000 ;

Now, therefore, in consideration of the foregoing and the mutual covenants contained in this CBA, the receipt and sufficiency of which are hereby acknowledged, the parties to this CBA agree as follows:

1. Developer shall pay a Chapter 187 and Chapter 188 penalty in the amount of \$271,744.96 to be paid within 90 days of execution of this CBA.

2. OEO-Certified Subcontractor Utilization and Resident Workforce Plan:
The Developer shall develop and submit for the City's review and approval a written subcontractor utilization plan for the remaining tenant build out (restaurant and second floor), which shall include at least the following:

- a. A specific plan of action to utilize subcontractors for the Project in the following dollar percentages:

MBE:	15% - 75% (Any shortage will be calculated based on 15% goal)
FBE:	7%
CSB:	8%

TTM
MH

- b. A specific plan of action to employ or cause its subcontractors to employ Cleveland residents for twenty percent (20%) of the total *Construction Worker Hours* (as defined in Section 14 of this CBA) in constructing the project.
 - c. A specific plan of action to employ or cause its contractors to employ Cleveland residents who are certified as low-income residents for four percent (4%) of the total *Resident Construction Worker Hours* in constructing the project.

3. OEO-Certified Subcontractor Utilization Performance and Resident Workforce Participation: During the execution of the Project, the Developer shall:

- a. Use good-faith efforts to utilize subcontractors to meet or exceed the MBE, FBE, and CSB participation commitments listed in section 2. (a) above in its Certified Subcontractor Utilization Plan.

If, after the start of the Project, the Developer substantiates its inability to meet the certified subcontractor commitments of its Subcontractor Utilization Plan, the Developer may request a change to its subcontracting obligations. Any change request must be submitted to the Office of Equal Opportunity ("OEO") in writing. The OEO will approve a change request only when the Developer has demonstrated, by documentation satisfactory to the OEO, its good-faith efforts to meet its commitments, which efforts were unsuccessful due to circumstances beyond the Developer's control.

When evaluating these subcontractor commitment change requests, the OEO may consider:

- i. Developer's good-faith efforts to meet its subcontracting commitments;
 - ii. Developer's good faith efforts to mitigate the loss of certified subcontractor participation;
 - iii. Developer's good-faith efforts to improve its certified subcontractor participation in other components of the development project;
 - iv. The availability of certified subcontractors; and
 - v. Any other factor(s) that may be appropriate for subcontractor commitment change request consideration.
- b. Developer shall employ and/or cause its contractors/subcontractors to employ Cleveland residents for twenty percent (20%) of the total *Construction Worker Hours* (as defined in Section 10 of this CBA)

- c. Developer shall employ and/or cause its contractors to employ City of Cleveland Residents who are certified as low-income residents for four percent (4%) of the total *Resident Construction Worker Hours* (as per definitions in Section 10 of this CBA)
4. An important goal of the City is to assist with the career planning and development of City residents who are High School students, disadvantaged Adults, and/or Community College students. As such, Developer/Owner shall contribute \$4,000 for the benefit of such internship/development program into the City of Cleveland Community Equity fund within 90 days of execution of this CBA.
5. An important goal of the City is to assist local businesses in successfully addressing their workforce needs. Developer agrees to request referrals from OhioMeansJobs/Cleveland-Cuyahoga County and give first consideration to hiring job candidates referred by OhioMeansJobs/Cleveland-Cuyahoga County and provided that Developer and/or its tenant determines that such job candidates meet the qualifications specified for the relevant position.
6. The City of Cleveland is committed to ensuring that affordable housing exists throughout the City and Developer/Owner is committed to providing workforce housing to residents. As such, Developer agrees that a minimum of 5% of the total residential units within this Project shall be set aside and restricted for households earning at or below approximately 120% of the Area Median Income for the Cleveland MSA.

Reasonable efforts shall be made to disperse rental units throughout the building. Workforce housing units will be built to the same standards as market rate units.

Rental affordability shall be maintained at least for the duration of seven years.

7. Developer/Owner supports nonprofits and recognizes the challenges nonprofits face in today's economy. To further that support, Developer/Owner will provide the following:
 - (a) Access to pool level conference room at no charge for a period of at least 5 years with a maximum number of 12 events per year and
 - (b) Access to second floor meeting space at least 4 times per year at a reduced rate for a period not to exceed 5 years. In the alternative, if access to second floor becomes unavailable or at Developer's discretion, Developer/Owner will make a community benefit equity fund contribution in the amount of \$7,000 payable within 120 days of execution unavailability.
8. Developer/Owner supports entrepreneurs/business and desires to support local initiatives, particularly for racial and socio disadvantaged groups that have been historically underrepresented in the business community. To further that support, Developer/Owner will
 - (a) allocate one (1) retail space or micro-unit retail for artisans and/or small business at a reduced rate of 50% of the market rate for a period of at least 5 years.
9. Developer agrees to utilize Cleveland Public Power (CPP) as its sole electricity provider for a period of at least 5 years. After one year of service, if the cost of electricity exceeds 110%, Developer/Owner may contact CPP and provide 90 days notice of intent to change suppliers and provide CPP an opportunity to price match.
10. The parties acknowledge that one barrier to entry for many MBE/FBEs is lack of proven success on commercial construction development projects. Developer/Owner supports emerging developers and desires to support local emerging developers from racial and socio economic groups that have been historically underrepresented.

- a. Developer/Owner agrees to sponsor 2 outreach events within the City of Cleveland to educate emerging developers on relevant topics (e.g. New Market Tax Credit, historic tax credits, PACE financing, and/or strong balance sheets) within 2 years of this CBA.

11. Reporting. Commencing on April 1, 2025, Developer/Owner shall provide semiannual community benefit reports to the Office of Equal Opportunity regarding CBA compliance in summary form including, but not limited to, the status of each community benefit, actions Developer has taken to meet each community benefit and the additional actions needed to satisfy community benefit.

12. Default/Penalty. In the event that the City determines that the Owner has failed to fulfill the requirements of this CBA, the City shall have been damaged. If the Owner does not cure such failure to the reasonable satisfaction of the City within 30 days after receiving written notice by the City of such failure, the City may assess a penalty against Owner including, for “egregious defaults”, as defined herein, denial or termination of all City financial assistance under the TIF Agreement. The City may also assess penalties as follows:

Penalty Payments. If Owner fails to make the penalty payment in section 1 of this CBA, the City may assess a penalty of up to \$200 per day until such failure is cured by Developer/Owner, capped at \$20,000.

Subcontractor Utilization Plan and Execution. If Developer/Owner fails to meet the requirement in sections 2 of this CBA, the City may assess a one-time penalty of up to \$20,000.

Internship Payment. If Developer/Owner fails to meet the requirement in section 4 of this CBA, the City may assess a penalty of up to \$100 per day until such failure is cured by Developer/Owner, capped at \$10,000.

Workforce Housing. If Developer/Owner fails to meet the requirement in section 6 of this CBA, the City may assess a penalty of up to \$20,000 per unit.

Nonprofit Space. If Developer/Owner fails to meet the requirements in section 7(a) of this CBA, the City may assess a one-time penalty of up to \$20,000. If Developer/Owner fails to make the second floor available for public access or does not make the Community Benefits Equity Fund contribution in 7(b), the City may assess an additional penalty of up to \$200 per day until such failure is cured by Developer/Owner, capped at \$10,000.

Retail Space. If Developer/Owner fails to meet the requirements in section 8 of this CBA, the City may assess a one-time penalty of up to \$30,000.

Cleveland Public Power. If Developer/Owner fails to meet the requirements in section 9 of this CBA, the City may assess a one-time penalty of up to \$100,000.

Outreach Event(s). If Developer/Owner fails to meet the requirements in section 9 of this CBA, the City may assess a one-time penalty of up to \$20,000.

Reporting. If Developer/Owner fails to meet the requirements in section 11 of this CBA, and Developer does not cure such failure to the reasonable satisfaction of the City within 10 days after receiving written notice of default from the City, the City may assess a penalty of up to \$100 per day until such failure is cured by Developer, capped at \$20,000.

13. Egregious Defaults/Acts: If the City determines that Developer/Owner's defaults are egregious defaults, the City may disqualify Developer/Owner from future financial assistance for a period of up to two years. "Egregious defaults" include but are not limited to:

- Providing false information regarding MBE, FBE, or CSB status;
- Failure to cooperate in the City's monitoring of compliance with the performance of this CBA by refusing to provide information or documents required to monitor compliance after request for such documents or information by the City;
- Failure to respond adequately to the reasonable satisfaction of the City to issues or claims by City representatives regarding Developer's performance under this CBA or other related issues;

- Accumulation of like documented complaints regarding Developer's performance of a contract;
- Failure to pay any financial obligation to the City or any of its departments, divisions, boards or commissions in a timely manner, including any applicable cure period;
- Failure to pay prevailing wage when required by state or federal law or to comply with similar laws;
- Debarment by any federal, state, or local government agency; or
- Commission of wage theft or payroll fraud as defined in Chapter 190 of Cleveland's Codified Ordinances.

14. Definitions.

In this CBA:

(a) "City Financial Assistance" means any City-funded grant, loan, tax increment financing, residential multi-family tax abatement in compliance with Ordinance No. 482-2022, passed March 25, 2022, Section 3, below market-value land transfer, and/or City-funded capital infrastructure improvements associated with a development project;

(b) "Community Benefits Agreement" or "CBA" means a legally enforceable agreement between the City of Cleveland and the Developer that provides community benefits;

(c) "Community Benefits" means the amenities, benefits, or commitments described in C.O. Sections 190A.02 and 190A.03;

(d) "Developer" means any person, firm, partnership, limited liability company, corporation, joint venture, proprietorship, or other entity that proposes a Development Project, excluding public improvement projects, in the City of Cleveland;

(e) "Development Project" means new construction of and alterations to buildings and structures located in the City; and

(f) "Construction Worker Hours" means the total hours worked on a Construction Contract by Skilled and Unskilled Construction Trade Workers, whether those workers are employed by the Contractor or any Subcontractor. In

determining the total Construction Worker Hours to be furnished at the construction site, there shall be included the number of hours devoted to all tasks customarily performed on a construction site, whether or not such tasks are, in fact, performed on the construction site. Construction Worker Hours excludes the number of hours of work performed by non-Ohio residents; and

(g) "Low-Income Resident" means a City Of Cleveland Resident who, when first employed by a contractor, is a member of a family having a total income equal to or less than the "Section 8" Low-Income limit established by the United States Department of Housing and Urban Development. Low-Income family is defined as a family whose annual income does not exceed eighty percent (80%) of the median family income for the area in which they reside, as determined by HUD. Income limits are adjusted for family size. A Resident who is not a member of a family shall be considered as a one (1) person family for this purpose. A Resident shall retain "Low-Income Person" status for a continuous five (5) year period starting upon the OEO's written acknowledgement that the Resident's family income does not exceed the above-stated limit, provided the Resident remains a Resident during the five (5) year period.

15. Intent to Comply

Parties agree that this CBA is lawful, enforceable, and binding on both parties; agree to waive any challenges to the enforceability of this CBA; and agree not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this CBA in any judicial action or proceeding.

16. Severability

Each section and each part of each section of this CBA is declared to be an independent section or part of a section, and it is declared to be the intent of the parties that if any section or part of a section or any provision thereof, or the application thereof to any person or circumstances, is held to be invalid, the remaining sections or parts of sections and the application of such provisions, other than those as to which it is held invalid, shall not be affected thereby.

17. **Successors and Assigns.** This agreement shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.

The parties have caused this instrument to be executed as of the day and year first above written.

CITY OF CLEVELAND



Thomas S. McNair

Director

Economic Development

CITY OF CLEVELAND

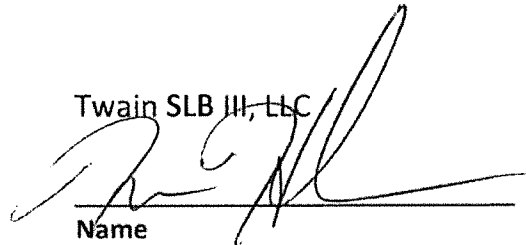


Tyson T. Mitchell

Director

Mayor's Office of Equal Opportunity

Twain SLB III, LLC



Name

Marc Hirshman

Printed Name

Authorized Signer

Title

87-4613161

Taxpayer Identification No.