RESOLUTION NO. 2023 - 072

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING THE SECOND AMENDMENT TO THE PURCHASE AND SALE AGREEMENT AND PROFIT PARTICIPATION AGREEMENT BETWEEN THE TOWN OF SOUTHWEST RANCHES AND BBX LOGISTICS PROPERTIES, LLC RELATING TO THE VACANT PARCEL OF LAND GENERALLY KNOWN AS THE CCA PROPERTY; EXTENDING DUE DILLIGENCE; CLARIFYING CERTAIN PROVISIONS IN THE AGREEMENTS; AUTHORIZING THE **EXECUTION OF THE SECOND AMENDMENT TO PURCHASE** AND SALE AGREEMENT AND PROFIT SHARING AGREEMENT: **PROVIDING** FOR **CONFLICTS**: **PROVIDING FOR** SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 2, 2022, pursuant to Resolution No. 2022-059, the Town entered into a Purchase and Sale Agreement and a Profit Participation Agreement (collectively the "Agreements") with MG3 SWR Industrial, LLC ("MG3") for the purchase of the Town's parcel generally known as the CCA Property; and

WHEREAS, on <u>April 27, 2023</u>, pursuant to Resolution No. <u>2023-046</u> the Town authorized an assignment of the Agreements to BBX Logistics Properties, LLC ("BBX") where it also clarified the purchase price, due diligence period, closing date, stabilization period, and profit share; and

WHEREAS, to resolve certain pre-development issues with other governmental entities, and to resolve certain title issues, the Town and BBX have agreed to extend the Agreements due diligence period contingent upon the date BBX receives its ERP Permit; and

WHEREAS, in addition the parties wish to clarify certain terms and conditions contained within the Agreements;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2. The Town Council hereby approves the Second Amendment to Purchase and Sale Agreement and Profit Sharing Agreement between the Town and BBX Logistics Properties, LLC, as specifically attached hereto and incorporated herein as Exhibit "A".

<u>Section 3.</u> The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to execute the Second Amendment to Purchase and Sale Agreement and Profit Sharing Agreement and to make any and all changes necessary and proper to effectuate the intent of this Resolution.

Section 5. Conflict. All resolutions or parts of resolutions in conflict herewith are hereby superseded to the extent of such conflict.

Section 6. Severability. If any clause, section, or other part of this Resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way affecting the validity of the other provisions of this Resolution.

Section 7. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 24th day of , 2023 on a motion by Jakonski and seconded by Muryski

Breitkreuz (A)
Allbritton (Nays)
Hartmann (A)
Jablonski (A)
Kuczenski (M)

Steve Breitkreuz, Mayor

Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

Keith Poliakoff, Town Attorney

Attest:

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EXHIBIT A

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND PROFIT SHARING AGREEMENT

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT & PROFIT SHARING AGREEMENT

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT & PROFIT SHARING AGREEMENT (this "Amendment") is made and entered into as of August ___, 2023 by and between BBX LOGISTICS PROPERTIES LLC, a Florida limited liability company ("BBX"), and THE TOWN OF SOUTHWEST RANCHES, a municipal corporation of the State of Florida ("SWR"). BBX and SWR may each be referred to herein individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, MG3 SWR Industrial, LLC ("MG3"), and SWR entered into that certain Real Estate Sale and Purchase Agreement dated as of June 2, 2022 (the "Original Purchase Agreement") with respect to the purchase and sale of certain real and other property located in Broward County, Florida, as more particularly set forth in the Purchase Agreement (the "Property"); and

WHEREAS, simultaneously with the execution of the Purchase Agreement, MG3 and Seller also entered into that certain Perpetual Profit Sharing and Construction Agreement dated as of June 2, 2022 (the "Original Profit Sharing Agreement") with respect to the development of the Property and sharing of profits derived therefrom; and

WHEREAS, MG3, BBX and SWR entered into that certain Assignment and Amendment Agreement dated as of May 3, 2023 (the "Assignment & Amendment"), whereby MG3 assigned, and BBX assumed, MG3's rights and obligations under the Purchase Agreement and the Original Profit Sharing Agreement, and BBX and SWR amended certain provisions of the Purchase Agreement and the Original Profit Sharing Agreement. The Original Purchase Agreement, as amended by the Assignment & Amendment, is referred to in this Amendment as the "Purchase Agreement"). The Original Profit Sharing Agreement, as amended by the Assignment & Amendment, is referred to in this Amendment as the "Perpetual Profit Share Agreement"); and

WHEREAS, BBX and SWR desire to further amend certain provisions of the Purchase Agreement and the Payment in Lieu Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the Parties hereby agree as follows:

- 1. <u>Capitalized Terms</u>. Capitalized terms used and not otherwise defined in this Amendment shall have the meanings given such terms in the Purchase Agreement.
- 2. <u>Amendments to Purchase Agreement</u>. The Purchase Agreement is hereby amended as set forth below:
- a. <u>Due Diligence Period</u>. The Due Diligence Period is extended to the date upon which Purchaser receives the ERP Permit (as defined in the Perpetual Profit Sharing and Construction Agreement and below in Paragraph 3(c) below), provided that in no event shall the Due Diligence Period extend beyond the date which is one (1) year after the date of this Amendment. An additional one (1) year extension of the Due Diligence Period will be granted by the Town Administrator of Seller for good cause shown. Purchaser agrees to diligently pursue receipt of the ERP Permit using commercially reasonable efforts.
- b. <u>Conditions Precedent to Purchaser's Obligations</u>. In addition to the conditions precedent to Purchaser's obligation to purchase the Property contained in Section 10.1 of the Purchase Agreement, the following new conditions precedent are hereby added in favor of Purchaser:

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- i. The ERP Permit shall have been issued. In this regard any denial or failure to issue the ERP Permit shall be deemed a failure of this condition precedent.
- ii. Seller shall be in a position to convey fee simple title to the Property subject only to those title exceptions and survey matters acceptable to Purchaser. In this regard, any inability of Seller to convey fee simple title to the Property subject only to those title exceptions and survey matters acceptable to Purchaser at Closing shall be deemed a failure of this condition precedent.

3. Amendments to Perpetual Profit Share Agreement.

- a. The title of the Perpetual Profit Share Agreement and all references to same throughout such document are hereby amended to "Payment in Lieu of Business Tax Receipts Agreement" ("Payment in Lieu Agreement"). In the event that the Seller ever implements a Business Tax Receipt program, the payments due and owing within the Payment in Lieu Agreement shall remain notwithstanding.
- b. <u>Site Plan; Phasing.</u> The conceptual site plan attached as Exhibit "A" to the Payment in Lieu Agreement is deleted in its entirety and replaced with the conceptual site plan attached as <u>Exhibit "A"</u> to this Amendment (the "<u>Site Plan</u>"). The Parties acknowledge and agree that BBX may elect to construct the Project in three separate phases (each a "<u>Phase</u>") as reflected on the Site Plan, and that in such event, all of the covenants, conditions, restrictions, agreements, and rights of BBX (as successor-ininterest to MG3) under the Payment in Lieu Agreement shall apply on a Phase-by-Phase basis notwithstanding anything in the Payment in Lieu Agreement to the contrary. Without limiting the generality of the foregoing, the Parties desire to memorialize the application of the foregoing sentence to specific provisions of the Payment in Lieu Agreement for the avoidance of doubt as follows:
- i. <u>Payment in Lieu Agreement</u>. The third (3rd) paragraph of Article 1 of the Payment in Lieu Agreement is deleted in its entirety and replaced with the following:

"MG3 shall pay to SWR, on a Phase-by-Phase basis, six percent (6%) of total gross rental income less common area maintenance (without taking into account (i) any management fee(s) payable to MG3 as part of common area maintenance, or (ii) any management fee(s) payable to an unrelated third party provider as part of common area maintenance in excess of three percent (3%) of total gross rent), real estate taxes and assessments, insurance, utilities, real estate commissions not to exceed six percent of total rental income, amortization of tenant improvements, payments under any declaration or reciprocal easement agreement, and Florida sales tax on rent on a quarterly basis (the "Payment in Lieu"). Quarterly Payment in Lieu payments shall be timely paid to SWR by the tenth (10th) day following the end of each calendar quarter (the "Payment Date"). A late fee equal to one percent (1%) per month of the amount due shall be imposed for failure to pay by the Payment Date. SWR and MG3 acknowledge and agree that MG3 may, at its option, cause tenants of the Project to reimburse MG3 the Payment in Lieu as a separate charge and, in such event, the reimbursement shall not be deemed part of gross rental income."

The term "Profit Share", as used throughout the Payment in Lieu Agreement, is hereby replaced with the term "Payment in Lieu".

ii. <u>Hold Period</u>. The fifth (5th) paragraph of Article 1 of the Payment in Lieu Agreement is deleted in its entirety and replaced with the following:

"With respect to each Phase of the Project, MG3 shall hold and retain such Phase until the earlier of: (i) the date on which the applicable Phase achieves ninety percent (90%)

stabilization, and (ii) the date which is thirty-six (36) months following Substantial Completion of such Phase. Notwithstanding anything in this Agreement to the contrary, (i) MG3 may sell any Phase of the Project at any time if pursuant to a build-to-suit arrangement or a forward purchase with a take-out buyer provided that the Town's Municipal Transfer Fee (as defined below) is paid and such purchaser takes subject to and assumes all of the obligations of MG3 under this Agreement, (ii) MG3 may transfer each Phase to a related entity at any time without payment of SWR's Municipal Transfer Fee and (iii) transfers of noncontrolling interests in MG3 or any affiliate that takes title to the Property that do not exceed fifty percent (50%) or more of the overall beneficial interest in such entity shall not require SWR's prior approval nor payment of SWR's Municipal Transfer Fee. To the extent a buyer of any Phase of the Project actually occupies such Phase as an "owner-occupier" (an "Owner-Occupier"), such Owner-Occupier may satisfy the requirement to pay SWR the Payment in Lieu by timely paying an amount equal to the Payment in Lieu for the applicable portion of such Phase estimated based upon similarly situated properties within a ten (10) mile radius of the Property taking into account such factors as (without limitation) permitted use, rentable square footage and building age. To the extent SWR and the Owner-Occupier cannot agree upon such amount within thirty (30) days, the basis for calculation of the Payment in Lieu with respect to the applicable portion of such Phase shall be determined as follows: SWR and the Owner-Occupier shall each, at their own expense, hire an independent real estate broker or certified appraiser with at least five years' experience with industrial properties within a ten mile radius of the Property to provide an estimate of market net rental income for the applicable portion of such Phase based on the factors above and, if such estimates vary by five percent or less, then the lower of such estimates shall serve as the basis to calculate the Payment in Lieu with respect to the applicable portion of such Phase. If such estimates vary by more than five percent, then the brokers or certified appraisers hired by SWR and the Owner-Occupier shall select a third independent broker or certified appraiser (the cost thereof to be split evenly by SWR and the Owner-Occupier) to provide an estimate of market net rental income for the applicable portion of such Phase which shall be averaged together with the lower of the estimates provided by the brokers or certified appraisers hired by SWR and the Owner-Occupier and such average shall serve as the basis to calculate the Payment in Lieu with respect to the applicable portion of such Phase occupied by the Owner-Occupier. The determined Owner-Occupier Payment in Lieu fee shall be adjusted by January 1 of each calendar year based upon the Consumer Price Index (or as reasonably soon thereafter as such data becomes available)."

iii. ROFO. The sixth (6^{th}) paragraph of Article 1 of the Payment in Lieu Agreement is deleted in its entirety and replaced with the following:

"Commencing on the ten (10) year anniversary of Substantial Completion of each Phase of the Project, prior to soliciting offers for the purchase and sale with respect to such applicable Phase on the open market, MG3 shall deliver a written notice (a "Notice of Solicitation") to SWR setting forth the material deal terms upon which BBX intends to go to market with. Within thirty (30) days after the giving of the Notice of Solicitation (the "Offer Period"), SWR may make an offer to purchase the appliable Phase by delivering written notice to MG3 (an "Offer Notice") which sets forth the purchase price, earnest money deposit, due diligence period, allocation of closing costs, closing date, and other terms of such proposed purchase. MG3 may accept SWR's purchase offer (it being agreed that MG3 shall be deemed to have rejected the offer if it fails to accept the Offer Notice in writing within ten (10) days after receipt thereof), by delivering written notice thereof to SWR (a "Offer Acceptance Notice"). If MG3 rejects (or is deemed to have rejected) the

offer contained in the Offer Notice or SWR shall fail to deliver an Offer Notice within the Offer Period (in which event SWR shall be deemed to have declined its right to do so). MG3 shall have the full power and authority to solicit and accept proposals for the purchase of the applicable Phase on the open market; provided, however, any acceptance of a proposal for the purchase of a Phase by MG3 shall be on substantially more favorable overall economic terms than as set forth in the Offer Notice but in no event less than ninety percent (90%) of the purchase price set forth in the Notice of Solicitation (the "Sale Requirements"); provided, further, however, that SWR shall have no right to object to the terms of any proposal for the purchase of a Phase accepted by MG3 for any reason other than failure to comply with the Sale Requirements. In the event SWR fails to purchase any Phase of the Project pursuant to this paragraph (other than due to a default by SWR or because this paragraph does not apply pursuant to the following sentence), MG3 shall pay the Municipal Transfer Fee to SWR. The rights and obligations contained in this paragraph shall be continuing in nature, and shall run with the land and be binding on the successors and/or assigns of the parties hereto, except that this paragraph shall not apply to (i) any foreclosure of a first-priority mortgage lien against the Subject Property, (ii) any deed in lieu of foreclosure, or (iii) the first sale of the Property by such mortgagee after taking title pursuant to foreclosure or deed in lieu thereof after which this paragraph shall, subject to this sentence, again apply.

In the event MG3 sells any Phase after the date of this Agreement, MG3 shall pay to SWR an amount equal to three percent (3%) of the purchase price actually received by MG3 in connection with the sale of such Phase at the applicable closing (the "Municipal Transfer Fee" or "Town's transfer fee"), which requirement shall run with the land and be binding on each transfer of the Property thereafter; provided, however, that no Municipal Transfer Fee shall be due (i) in connection with any foreclosure of a first priority mortgage lien against any Phase, deed in lieu of such foreclosure or the first sale of any Phase by such mortgagee after taking title pursuant to foreclosure or deed in lieu thereof, (ii) where SWR is the transferee, or (iii) where expressly stated not to apply elsewhere in this Agreement."

iv. <u>Construction Schedule</u>. Section 2.2(c) of the Payment in Lieu Agreement is deleted in its entirety and replaced with the following:

"Developer shall begin vertical/ground up construction, and shall Substantially complete, each Phase of the Project based on the following schedule:

Phase	Commencement of Vertical/Ground Up Construction	Substantial Completion
1	Within 6 months after MG3 acquires fee simple title to the Subject Property from SWR and obtains site plan approval and a building permit for Phase 1 of the Project ("Phase 1 Commencement Date").	Within 15 months after Phase 1 Commencement Date ("Phase 1 Substantial Completion Date")
2	Within 12 months after Phase 1 Substantial Completion Date	Within 15 months after Phase 2 Commencement Date

("Phase 2 Commencement Date")

("Phase 2 Substantial Completion Date")

3

Within 12 months after Phase 2 Substantial Completion Date ("Phase 3 Commencement Date") Within 15 months after Phase 3 Commencement Date ("Phase 3 Substantial Completion Date")

Should MG3, or any successors or assigns, fail to Substantially Complete any Phase of the Project within the applicable time period set forth above, MG3 shall pay liquidated damages to SWR commencing on, as applicable, the month immediately following the Phase 1 Substantial Completion Date, the Phase 2 Substantial Completion Date, or the Phase 3 Substantial Completion Date, in the amount of funds that SWR would have been entitled to if the applicable Phase of the Project was fully complete and said structures thereupon fully occupied, including but not limited to SWR's share of ad valorem taxes and assessments, and the Payment in Lieu."

- v. <u>Certain Remedies</u>. Section 8.2(B) of the Payment in Lieu Agreement is deleted in its entirety and replaced with the following:
 - "(B) (i) If the Event of Default is the failure of MG3 to have commenced vertical/ground up construction of any Phase of the Project in accordance with the construction schedule contained in Section 2.2(c) of this Agreement (subject to force majeure), SWR may, with respect to the applicable Phase of the Project, treat this Agreement as terminated and repurchase the applicable Phase of the Project for one-third (1/3rd) of the amount paid, or (ii) if the Event of Default is the failure of MG3 to have timely achieved Substantial Completion of any Phase of the Project in accordance with the construction schedule contained in Section 2.2(c) of this Agreement (subject to force majeure), SWR may record a lien against the applicable Phase of the Project (which lien shall include the power to foreclose) to secure repayment of the liquidated damages SWR is entitled to pursuant to Section 2.2(c) of this Agreement which lien will be subject and subordinate to any then current or future first mortgage lien encumbering the Subject Property."
- c. <u>Financial Reporting Requirements</u>. Notwithstanding anything contained in Section 1.02 of the Payment in Lieu Agreement to the contrary, MG3 shall only be required to provide a copy of its tax return to the extent it files its own separate tax return and an audited financial statement reflecting only the financials of the Subject Property. If MG3 files a consolidated tax return with any affiliated entities, MG3 shall not be required to provide a copy of its tax return, but shall instead provide an audited financial statement reflecting only the financials of the Subject Property.
- d. <u>Land</u>. Section 2.1 of the Payment in Lieu Agreement is hereby deleted in its entirety and replaced with the following:

"Section 2.1 Land.

The Project shall be constructed on the Subject Property which is currently a vacant site with no readily available water or sewer utilities upon said land. The Subject Property also contains some wetlands. SWR agrees that any and all impacts to those wetlands shall be fully mitigated off-site on certain public land owned by SWR and located at Frontier Park, at MG3's sole cost and expense, pursuant to the terms and conditions of the final non-appealable Environmental Resources Permit issued by the South Florida Water Management District and all referenced and related final non-

appealable permits or approvals issued by local, state and federal authorities (collectively, the "ERP Permit"), up to and including the construction, certification and conversion to the "Operation and Maintenance" phase, as that term is defined in Chapter 62-330.310, F.A.C. (referred to hereafter as "O&M"). SWR and MG3 will serve as co-applicants on the ERP Permit and SWR shall provide MG3 access to said public land to conduct any and all work associated with, or required by, the ERP Permit. All of MG3's obligations related to the wetland mitigation requirements associated with construction of the Project on the Subject Property, whether local, state, or federal, shall be satisfied once the surface water management system and mitigation features, set forth in the ERP Permit, have been converted to the O&M phase, and a Time Zero Report for the mitigation on the public land has been submitted to the appropriate regulatory agency. One hundred and eighty (180) days after MG3's initial mitigation work is complete and said Time Zero Report submitted to the appropriate regulatory agency, SWR shall thereafter be solely responsible for all subsequent maintenance, monitoring, or other ongoing obligations related to wetland mitigation set forth in the ERP. In addition, as relates to off-site improvements, MG3 shall only be required to cause the design and the construction of a two (2) lane public road on Southwest 202nd Avenue from the Subject Property south to the existing pavement constituting Southwest 202nd to Sheridan Street."

- e. <u>Insurance</u>. Notwithstanding anything contained in Section 6 of the Payment in Lieu Agreement to the contrary, all rights of SWR to receive insurance proceeds shall be subject to the rights of any institutional lender with a first-priority mortgage lien against the Subject Property, and SWR shall only be entitled to receive insurance proceeds as and to the extent provided in Section 6 of the Payment in Lieu Agreement in the event of a total loss casualty event with respect to any Phase which BBX does not elect to reconstruct.
- 4. Except as modified hereby, the Purchase Agreement and the Payment in Lieu Agreement are and shall remain in full force and effect in accordance with their respective terms. In the event of any conflict between the terms and provisions of the Purchase Agreement or the Payment in Lieu Agreement and this Amendment, the terms and provisions of this Amendment shall control and supersede such conflicting provisions.
- 5. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. Execution and delivery of this Amendment by facsimile or email shall be good and valid execution and delivery for all purposes.

(Remainder of Page Intentionally Left Blank – Signatures Appear on the Following Pages)

Exhibit "A"

Site Plan



[Signature Page to Second Amendment to Purchase and Sale Agreement & Profit Sharing Agreement]

IN WITNESS WHEREOF, BBX and SWR have executed this Agreement under seal as of the date first above written.

BBX:

BBX LOGISTICS PROPERTIES LLC, a Florida limited liability company

By: _______Name: Mark G. Levy

Title: President

SWR:

TOWN OF SOUTHWEST RANCHES, a municipal corporation of the State of Florida

By: Name: Steve Breitkreuz

Title: Mayor

ATTEST: Russell Muniz, Assistant Town

Administrator / Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Keith Poliakoff, Town Attorney