

Amendment to Option and Development Agreement

This Amendment to Option and Development Agreement (this “Amendment”) is made and entered into by and between The City of Avon, Ohio, an Ohio municipal corporation, (the “City”) and T3 Realty, LLC, an Ohio limited liability company, (“T3”). The effective date of this Amendment shall be date of last execution by the parties hereto (the “Effective Date”).

Witnesseth:

Whereas, on or about July 6, 2016, the City and T3 Holdings, LLC, an Ohio limited liability company, entered into an Option and Development Agreement (the “Option and Development Agreement”) under which the City granted T3 Holdings, LLC the right and option to purchase an 11.3 acre parcel of vacant land commonly known as Lorain County Permanent Parcel No. 04-00-003-101-493 (the “T3 Property”); and

Whereas, T3 Holdings, LLC assigned all of its right, title and interest under the Option and Development Agreement to T3; and

Whereas, subsequent to such assignment, T3 exercised the option to purchase that was set forth in the Option and Development Agreement and T3 is now the owner of the T3 Property; and

Whereas, T3 has constructed a health and wellness and athletic performance training facility on the T3 Property and wishes to construct a second building that will be initially used primarily for baseball, basketball, volleyball training and activities and for uses similar to those existing and permitted at the existing building on the T3 Property and also for medical and physical therapy and related purposes (the “Second Building”); and

Whereas, the parties recognize and understand that construction of the Second Building on the Property presents serious challenges and in consideration of the undertakings by T3 as set forth herein and in consideration of the positive economic impacts to the City, the grant of easements as set forth herein, the construction of improvements on other land owned by the City and for the benefits to be received by the citizens and schools of the City, the City will contribute up to but not exceeding the total sum of Five Hundred Thousand Dollars (\$500,000.00). Said funds will be used by T3 to cover the costs of soil and mound removal, as a waiver of permit fees and to construct improvements on City land; and

Whereas, the parties wish to detail the costs the City will contribute, it being understood that in no case shall the City contribution exceed Five Hundred Thousand Dollars (\$500,000.00); and

Whereas, the parties desire to amend the Option and Development Agreement for the purposes set forth herein.

Now therefore, the parties agree as follows:

1. **Construction of Building and City Contribution.** T3 will construct the Second Building on the northerly half of the T3 Property. The Second Building will be used primarily for baseball, basketball, volleyball training and activities and for uses similar to those existing and permitted at the existing building on the T3 Property and also for medical and physical therapy and related purposes. In consideration of the completion of the contemplated project by T3, and in consideration of the other promises and covenants made by T3 as specified herein, the City agrees to contribute up to but not exceeding the total sum of Five Hundred Thousand Dollars (\$500,000.00) to T3 to assist T3 in the

completion of this project. At T3's option, it may split the T3 Property into two parcels, the second, northerly parcel to be owned by an entity that is controlled by the current majority owners of T3.

2. **Fly-Ash Matter.** The City acknowledges that the T3 Property continues to have significant development challenges due to its previous use as a fly-ash disposal area and that in order to properly develop the northerly half of the T3 Property and construct the Second Building, significant financial and other obstacles have to be dealt with and the City has agreed to assist T3 with the costs associated with removal of the mound or cap associated with the fly-ash. In this regard, T3 shall submit plans to the City Planning Commission relating to the removal of mounds and fly-ash, including the location to which these soils will be deposited in an area owned by the City that is west of and adjacent to the T3 Property. Invoices for said soil removal activity shall be submitted by T3 to the City Engineer and Finance Director for approval by both. Upon such approval being obtained, the Finance Director shall cause payment to be made directly to the contractor. Payment is limited to the City's contribution as set forth in Paragraph 1.

3. **Construction of Parking and Roadway Improvements on City Land T3 Land.** T3 shall complete certain parking, roadway and other improvements on the T3 Property and the land owned by the City that is commonly known as Lorain County Permanent Parcel Nos. 04-00-003-101-583 and 04-00-004-103-030 (the "City Property"). This work is to be completed in accordance with plans that have been or will be submitted to and approved by the City's Planning Commission. These improvements include landscaping, paving, striping and installation of parking lot lights, poles and directional signage on the T3 Property and the City Property. Invoices for completion of these improvements on the City Property shall be submitted by T3 to the City Engineer and Finance Director for approval by both. Upon such approval being obtained, the Finance Director shall cause payment to be made directly to the contractor. Payment is limited to the City's contribution as set forth in Paragraph 1. The estimated cost of these improvements is set forth in Exhibit B.

4. **Waiver of Permit and Tap Fees.** It is anticipated that permit fees and tap in fees for the Project would ordinarily be in excess of Ninety-Five Thousand (\$95,000.00) Dollars, however, the City hereby waives all City requirements for T3 to pay for permit fees, storm water detention fees, tap fees and other developmental fees for the Project but only to the extent that T3 has not exceeded the City's contribution limit set forth in Paragraph 1. (See Exhibit A for a sample breakdown from Building One) Nothing herein shall relieve T3 from its responsibility to pay other entities outside the City of Avon for such things as outside plan examination, water taps (Avon Lake), sanitary sewer taps (City of North Ridgeville) or other such charges.

5. **Parking Easements.** Upon completion of construction of the Second Building, each party shall grant the other, with respect to the areas they own and upon which T3 will construct parking and driveway and related improvements, reciprocal easements for ingress and egress and parking. These easements shall be for the benefit of the parties hereto and their respective employees, guests, contractors, agents and invitees. These parking and ingress and egress easements enjoyed are non-exclusive and in common with the owner thereof and such owner's employees and invitees, on a first come first served basis. These areas are only to be used for parking and for ingress and egress. Parking areas shall not be blocked or used for any purpose other than parking without first obtaining the prior written approval of the other party. T3 shall have the responsibility to maintain, repair and replace these areas and to remove snow and ice from all these parking and drive areas until the City (or its successor or grantee) shall develop Lorain County Permanent Parcel No. 04-00-004-103-030 after which the owners of their respective properties shall have the responsibility for those maintenance, repair and replacement and snow removal obligations on their land. Until such time as Lorain County Permanent Parcel No. 04-00-004-

103-030 is developed, the cost of electrical use of the parking lot lights located on that parcel will be paid by T3 and once developed, the owners of their respective properties will be responsible for that cost. Enforcement of the foregoing easement rights shall be by the benefitted and burdened parcel owners by appropriate judicial proceedings limited to specific enforcement of the provisions of thereof. The foregoing easement rights may be waived or altered by mutual agreement of the parties hereto but neither party shall be obligated to waive or alter said rights. The parties will however convene within six (6) months after the Second Building is operational to alter the foregoing rights provided both parties determine a need to do so.

6. **Use of Second Building by Citizens and Schools of the City.** Upon completion of the Second Building, the parcel containing the Second Building shall be burdened by the following non-transferrable covenants in favor of Avon Seniors, Avon Parks and Avon Local Schools and an appropriate deed restriction will be recorded with the Lorain County Recorder:

Avon High School Athletics: Avon Local Schools will be permitted free use of the facility as provided below as and when it is available for the purpose of conducting camps for basketball, soccer, volleyball, softball and baseball. Each sport will be entitled to free use for 8 total hours per year, 40 in the aggregate. These camps will be scheduled on 4 different days for 2 hours each day per sport. Additional programming may be coordinated with T3 if space/time is available at 15% off the then posted market price.

Senior Center: Seniors, through coordination by T3 with the senior center director, will also be provided with 2hrs per week for 50 weeks each year in non-peak times for programs developed by the senior center director. There will be no charge for use of the facility. These 2 hours programs may consist of pickleball, walking classes, fitness classes and the like.

Parks and Recreation: Parks and Recreation will be permitted to utilize the facility for three (3) days per week during the school calendar year, 9:00 a.m. to noon – days to be determined at no charge.**

In addition, Park and Recreation will be permitted to conduct after school activities from 4:00 p.m. to 10:00 p.m. during Fall, Spring & Summer each for a period of six (6) weeks – 2x a week – 2 hrs. per session, days to be determined. Fall will begin around 9/1 and end around 10/15. Spring will begin around 4/15 and end around 5/31. Summer will begin around 6/15 and end around 7/31.**

If other times become available during the week or on weekends, T3 agrees to contact Park and Recreation to offer said times on a first come basis. **

- Space will be provided for storage of program equipment for Parks & Recreation.
- Basketball hoops will be lowered to 8 feet if requested.
- Parks & Recreation would need a storage area for program equipment
- Parks and Recreation will have a site supervisor for each program, handle registrations, set-up and take down of program equipment and the like.

**Free use of the facility will be provided for Park & Recreation programs as set forth above for a period of three (3) years. Thereafter, the facility will be available at a fifty percent (50%) discount from the then listed price.

Schools - 40hrs. x \$300/hr. (use of multiple courts at once) = \$12,000 value per year

Senior Center - 2 hrs./wk. x 50 wks. x \$100/hr. = \$10,000 value per year. (Time during the day to use facilities for pickle ball / walking / coffee, etc.

Park & Recreation - 2 hrs. of facility use x \$300/hr. = \$600 @ twice per wk = \$1,200 x 6 wks = \$7,200 each period x 3 periods = \$21,600 value per year. In addition, 3hrs. @ \$200 per hr. 3 x per week for 36 weeks (\$600 x 3 days per wk. = \$1,800 per wk. x 36 wks. = \$64,800 **Total value per year: \$86,400**

Youth Basketball Tournaments: T3 will run up to two free basketball tournaments per year, the times and dates for which shall be determined. Tournaments will occur over a 2 day period. T3 will also provide access to these courts for one league allowing use of the T3 facility at times available for up to 24 hours per year.

T3 hereby grants to the City, the right to use the facilities being constructed in the Second Building (the "Athletic Facilities") for any of the purposes and at the times set forth above (each a "Permitted Use"). No such use will be permitted for any private entity or purpose. Each such use will be subject to the following restrictions:

- A. Each user ("User") will be required to execute T3's standard waiver of liability form that is signed by all users of the T3 facility.
- B. Each Permitted Use shall require reservation of the Athletic Facilities by or on behalf of the user by written notice to T3 specifying the date, time and duration of the Permitted Use, the purpose of the Permitted Use, identity of the User, and the specific area of the Athletic Facility to be used, such notice to be received by T3 not less than sixty (60) days prior to each intended Permitted Use, a ("Reservation"). Any conflict among multiple Users attempting to make a reservation for use of the Athletic Facilities shall be resolved by the Avon Recreation Coordinator or the Avon Senior Coordinator, whichever is applicable.
- C. Absent a timely Reservation of the Athletic Facilities, the use thereof on such day or days by all benefitted parties for any Permitted Use shall be deemed waived, whereupon T3 shall be entitled to use the Athletic Facilities in their entirety on such day or days for such purposes as T3 may deem appropriate.
- D. All Reservations for the use thereof by Benefitted Users who are seniors or associated with parks and recreation, shall be made by the Avon Recreation Coordinator or Senior Coordinator, who shall be solely responsible, at its sole cost and expense, for overseeing such use and coordinating all Reservations by Users on behalf of Avon. In the event that any Permitted Use and/or User(s) adversely affects, interferes with, or disturbs, in any way, T3's normal business operations, T3 reserves the right, in its reasonable discretion, to immediately terminate the Reservation and remove any and all disruptive Permitted Uses and/or Users from the Athletic Facilities for that day. Management by the Avon Recreation Coordinator or Senior Center Coordinator shall include (i) all set up for each Permitted Use and all take down and cleaning necessary to return the Athletic Facilities to T3 at the end of each Reservation in generally the same condition as provided to the User at the commencement thereof (normal wear and tear excluded), and (ii) procuring from each individual participant in a Permitted Use, a release of

T3, its members and lender from any and all liability for injury to person or property sustained by the participant while on the Athletic Facilities.

- E. T3 reserves the right to be the sole provider of all food, beverages and concessions available at the athletic facility in connection with a Permitted Use by a User unless the parties otherwise agree.
- F. The foregoing rights to use the Athletic Facilities by a User shall run with the land.
- G. The foregoing rights to use may be waived or altered by mutual agreement of the parties hereto but neither party shall be obligated to waive or alter said rights of use. The parties will however convene within six (6) months after the Second Building is operational to alter the foregoing rights provided both parties determine a need to do so.

7. **NOTICES.** All notices, demands, requests, and other communications required by this Amendment shall be in writing and shall be deemed to have been properly given or served when received if: (i) personally delivered, (ii) deposited, charges prepaid, with a nationally recognized overnight courier (which shall include the United States Postal Service) for next business day delivery, properly addressed to the party for whom intended, or (iii) deposited postage prepaid, as certified or registered US mail, properly addressed to the party for whom intended:

If to Avon addressed to:

Mayor, City of Avon
Bryan K. Jensen
36080 Chester Road
Avon, Ohio 44011

With a copy to:

Law Director, City of Avon
(John A. Gasior)
36815 Detroit Avenue
Avon, Ohio 44011

If to T3 addressed to:

T3 Performance, LLC
Attn: Mike D'Andrea
1965 Recreation Lane
Avon, Ohio 44011

With a copy to:

Timothy S. Trigilio, Esq.
Trigilio, Stephenson & Dattilo, PLL
5750 Cooper Foster Park Road, Suite 102
Lorain, Ohio 44053

Any Party may change the mailing address for notices to itself and/or its copy recipient by notice to all other Parties and their copy recipients.

8. MISCELLANEOUS

- A. Force Majeure. Unless otherwise expressly provided, neither the City nor T3 will be considered in default of an obligation to be performed by the City or T3 as the case may be, if delayed in the performance thereof due to causes beyond its reasonable control and without its fault or negligence ("Force Majeure"). Such causes shall include, but are not limited to, acts of God or of an enemy of the United States, acts of terrorism, acts of the federal or state government, acts or delays of the other party, fires, floods or other casualty, unusually severe weather, epidemics or pandemics, freight embargoes, unavailability of materials, strikes or the delays of contractors, subcontractors or materialmen due to any of the foregoing.
- B. Counterpart Execution. This Amendment and any amendment or modification hereto may be signed by the parties in multiple counterparts, in the presence of each other or at separate locations and times, and each counterpart to which the signatures of all parties have been appended shall constitute an original hereof of all purposes. Delivery of this Amendment or such amendment or modification by either party may be affected by transmitting its executed counterpart by facsimile or e-mail ("Electronic Delivery") in lieu of delivering a counterpart thereof with such party's original signature affixed thereto. Any party availing itself of Electronic Delivery intends to bind itself to the terms of the instrument so executed by its delivery in such manner, acknowledges that the other party will and is entitled to rely on such party's Electronic Delivery as delivery of such party's executed counterpart for all purposes, and hereby waives any defense to the enforcement thereof based upon the failure of such party to deliver an executed counterpart with an original signature affixed thereto to any other party. Notwithstanding the foregoing, any party availing itself of Electronic Delivery nonetheless agrees that promptly following the foregoing facsimile transmittal, it shall deliver an original executed counterpart of this Amendment or the amendment or modification, as the case may be, to the party receiving Electronic Delivery, but its failure so to do shall not affect the enforceability of this Amendment or the amendment or modification as executed at the time of Electronic Delivery.
- C. Limitation on Personal Liability. No elected official or employee of the City shall have any personal liability in the event of any default or breach of this Amendment by the City, or for any sum which may be payable to T3 pursuant to the terms of this Amendment or any obligation arising in connection with this Amendment.
- D. Further Assurances. Each Party agrees to execute such other and further documents as may be necessary or required to consummate or more fully confirm or effect the transactions contemplated in this Amendment, at the expense of the party requesting such documents.
- E. Entire Agreement. This Amendment represents the entire agreement of the Parties, all negotiations, consideration, representations, and understandings between them with respect to the Project being incorporated in this Amendment which and may be modified only by written agreement signed by both Parties.
- F. Severability. If any provision of this Amendment is for any reason held to be illegal or invalid, the remainder of this Amendment shall continue in full force and effect without the illegal or invalid provision unless it is expressly determined to be inequitable to the Parties for it to do so.

- G. Governing Law and Forums. This Amendment shall be governed by the laws of the State of Ohio. Unless otherwise agreed by the Parties, all disputes arising under this Amendment shall be litigated in the Lorain County Court of Common Pleas or the Federal Court for the Northern District of Ohio, and each party consents and submit themselves to the jurisdiction and venue of those courts.
- H. Avon Council Approval. This Amendment shall not be enforceable against the City unless and until it has been approved by Avon City Council by adoption of an appropriate ordinance.
- I. Avon Total Contribution. As set forth herein, the City has agreed to contribute \$500,000.00 to T3 in connection with its construction of the Second Building. In no case will the City's contribution exceed that amount.

Executed on the dates indicated below.

THE CITY OF AVON, OHIO, an Ohio municipal corporation

By: _____

Bryan K. Jensen, Mayor

Date of Signature: _____

T3 Realty, LLC, an Ohio limited liability company

By: _____

Michael R. D'Andrea, President

Date of Signature: _____

APPROVED AS TO LEGAL FORM
AND CORRECTNESS:

John Gasior, Director of Law

City of Avon

EXHIBIT A



FEE SHEET_1965
RECREATION LANE.pc

EXHIBIT B



10-27-21 T3 Hard
Courts City of Avon W