



# CLEVELAND HEIGHTS

## COUNCIL UPDATE

**December 9, 2021**

### MEETINGS & REMINDERS

Monday, December 13	6:30 p.m.	Special City Council Meeting City Hall – Council Chambers
	6:45 p.m.	Council Committee of the Whole City Hall – Executive Conference Room
Tuesday, December 14	6:30 p.m.	Parks & Recreations Advisory Board Community Center
Wednesday, December 15	7:00 p.m.	Racial Justice Task Force Housing & Economic Opportunity Subcommittee Online
	7:00 p.m.	Board of Zoning Appeals City Hall – Council Chambers
Thursday, December 16	6:00 – 8:00 p.m.	Meet Your Police City Hall – Lower Level
Friday, December 17	9:30 a.m.	Commission on Aging Senior Activity Center

### LEGISLATION

**Amato Homes.** A Resolution authorizing the City Manager to enter into a Development Agreement with Amato Homes I, LLC for the redevelopment of vacant residential lots owned or controlled by the City with new single-family homes;

### CITY MANAGER'S REPORT

- Please find attached a memo provided by Housing Director Butler. Given the recent discussions regarding trash and bulk pickup, this memo outlines the current procedures and

the involvement of staff from various Departments. The decision to go to once-a-month bulk pickup is based on staffing concerns/ availability.

- The Special Council meeting for Monday, December 13<sup>th</sup> will be a first reading regarding the Amato Homes legislation. This will be followed by discussion during the COW meeting.
- Complaints/concerns: All resident inquiries and complaints are followed up on as soon as possible by the appropriate staff. Some of the issues such as tree lawn trees and sidewalks; disposition of vacant lots, etc. are being reviewed by an in-house team of staff to make recommendations to Council.

To: Susanna Niermann O'Neil, City Manager

From: Allan Butler, Director of Housing

Re: Bulk citations/ trash on tree lawn

Date: December 7, 2021

Housing Inspectors and the Supervisor of Refuse & Recycling have been assigned to identify and placard offenders of Ordinance 1351.991 and 1351.14 which relate to the disposal of rubbish and garbage by the residents of the City and the requirement that property owners keep the sidewalk, tree lawn and other public areas in front of their premises maintained.

Stickered notices are placarded on the property and photos are taken of the trash and debris in question, The photos are uploaded into Housing's Software and a civil penalty of \$50.00 per the Ordinance is sent to the owner of the property. Civil penalties increase to \$100.00 if not paid within 30 days. And the charge for a repeat offense within 30 days of a prior offense shall be \$100.00.

The photos are also sent to Public Works for scheduling the collection of the nuisance and to estimate the cost of the collection per General Offenses Code, Chapter 527 Littering. If the violator fails to comply with this order within three days, the City may remove the debris and the violator shall be liable for a civil penalty equal to three times the cost of such removal services.

The Refuse & Recycling Department collects the debris and inform the Housing Department of the removal cost. Housing staff invoices the owner of the property for the cost of the removal. All invoices and costs are maintained in our Housing Software and per Chapter 553 Abatement of Nuisance, if the cost is neither paid or timely appealed it may be certified to the County Fiscal Officer for collection as other taxes and assessments are collected.

The Housing Department may also pursue the owner in Housing Court for the violation which has been abated by the City. In 2021 the Housing Department has certified 25 parcels with a total of \$7,369 13 for unpaid trash collection notices.



# CLEVELAND HEIGHTS

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## Memorandum

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**To:** Susanna Niermann O'Neil, City Manager  
**From:** Ryan Prosser, IT Director  
**Subject:** IT Department Update  
**Date:** December 7, 2021

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The City's voice over IP phone system has been in place for a few weeks now. All external phone numbers have been ported to a new carrier bringing along significant cost savings, improved call routing, and increasingly efficient call handling.

An internal reworking of the City's computer network is ongoing to strengthen cyber security and improve the efficiency and scalability of the network. The finished product will provide for improved Wi-Fi stability and network segmentation to reduce the level of exposure in respect to security.

Continue discussions amongst IT, Public Works and Utilities, and billing software vendors are bringing to light the latest available features, improved efficiencies, and higher levels of customer service that a new cloud-based billing software platform can provide. The technical pieces which interface with utility billing are all being revisited to ensure that we leverage the most appropriate products and continue to improve workflows in regard to invoicing, printing, mailing, and payment processing.



# CLEVELAND HEIGHTS

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## Committee of the Whole

**December 13, 2021**

**6:45 p.m.**

**Agenda**

1. Legislation overview/Caucus
2. Amato Homes Development Agreement Discussion
3. Executive Session
  - a. *To consider the terms of sale or lease of City-owned real property*



## CLEVELAND HEIGHTS

### **AGENDA (tentative) – CLEVELAND HEIGHTS CITY COUNCIL MEETING** **COUNCIL CHAMBERS**

**Monday, December 13, 2021**  
**Special Meeting**  
**6:30 p.m.**

**Cleveland Heights City Hall**  
**40 Severance Circle**  
**Cleveland Heights, Ohio**

- 1) Meeting called to order by Council President**
- 2) Roll Call of Council Members**
- 3) Excuse absent members**
- 4) Personal communications from citizens concerning Agenda items only**
- 5) Committee Report (Planning and Development Committee only)**
  - a.) PLANNING AND DEVELOPMENT COMMITTEE**

**RESOLUTION NO. 160-2021 (PD), *First Reading*.** A Resolution authorizing the City Manager to enter into a Development Agreement with Amato Homes I, LLC for the redevelopment of vacant residential lots owned or controlled by the City with new single-family homes; and declaring an emergency.

- 6) Adjournment**

**NEXT MEETING OF COUNCIL: MONDAY, DECEMBER 20, 2021**

Proposed: 12/13/2021

RESOLUTION NO. 160-2021 (PD), *First Reading*

By Council Member

A Resolution authorizing the City Manager to enter into a Development Agreement with Amato Homes I, LLC for the redevelopment of vacant residential lots owned or controlled by the City with new single-family homes; and declaring an emergency.

WHEREAS, the City issued an RFQ/RFP in October, 2020 for proposals for the collaborative development of new construction, single-family, owner-occupied infill housing on lots that are currently vacant and owned or controlled by the City, known as the Phase I Neighborhood Redevelopment Program; and

WHEREAS, in December 2020, Amato Homes I, LLC (“Amato Homes”) timely submitted its proposal for the development of approximately ten (10) single family homes pursuant to the RFQ/RFP ; and

WHEREAS, on March 15, 2021, this Council authorized the City Manager to negotiate with Amato Homes on the terms of a non-binding Memorandum of Understanding pursuant to the RFQ/RFP and Amato Homes’s response; and

WHEREAS, pursuant to Resolution No. 109-2021, this Council authorized the City Manager to enter into a Memorandum of Understanding with Amato Homes, for the redevelopment of vacant residential lots owned or controlled by the City with new single-family homes; and

WHEREAS, after extensive negotiations, the parties have reached a tentative agreement on the specific terms and conditions of a Development Agreement; and

WHEREAS, this Council has determined that it is in the best interest of the City and its residents to move forward with the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio that:

SECTION 1. This Council hereby authorizes the City Manager to enter into a Development Agreement with Amato Homes I, LLC, and sign any other related documents, for the redevelopment of vacant residential lots owned or controlled by the City through the transfer of such lots to Amato Homes and the construction and sale of new single-family homes on such lots. The Development Agreement shall be substantially in accordance with the Development Agreement attached hereto as Exhibit A. The Development Agreement and any related documents shall be approved as to form by, and subject to the final approval of, the Director of Law.

RESOLUTION NO. 160-2021 (PD)

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to enter into the above-referenced Development Agreement and facilitate the construction of new, single-family infill housing within the City at the earliest time possible. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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JASON S. STEIN  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:



# CLEVELAND HEIGHTS

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12.8.2021

## **Economic Development Department - Memo to City Council:**

**Subject:** Neighborhood Redevelopment Program (NRP) Phase I  
Infill Housing on Desota Avenue  
Development Agreement with Amato Homes

The Administration has successfully concluded negotiations of a proposed Development Agreement with Amato Homes (Amato Homes I, LLC) to construct new infill housing along Desota Avenue. This proposed agreement follows the approval by Council and subsequent execution of a Memorandum of Understanding (MOU) on or about August 26, 2021 between the City and Amato in anticipation of this project.

The Agreement establishes that the Developer will construct new infill housing on up to 18 lots in the City, resulting in up to 18 new homes in the City. The building sites are currently City-owned vacant lots. The resulting new homes are to be single-family owner-occupied dwellings.

The construction of new homes on lots that have been vacant for a significant period of time is anticipated to have a positive impact along this street and surrounding area by providing neighborhood stabilization, vibrancy, and attracting new residents to our community.

The Developer currently anticipates that the total project cost (new investment in the City) is expected to be in excess of \$2,500,000. The project is expected to be developed in one overall phase of construction, with the anticipated sales price of each home likely to exceed \$220,000 (subject to increase due to escalating prices of materials). The Developer intends to substantially complete the project within 24 months after closing. The agreement envisions the lots being acquired by the Developer four (4) lots at a time (phases), with the last acquisition phase consisting of those lots that remain. The lots will be sold by the City to the Developer at \$100.00 per lot.

The Administration recommends approval of the proposed legislation authorizing the City Manager to enter into a Development Agreement with Amato Homes I, LLC to construct new infill housing along Desota Avenue.

**DEVELOPMENT AGREEMENT**

*by and between*

**CITY OF CLEVELAND HEIGHTS, OHIO**

*and*

**AMATO HOMES I, LLC**

**Project Name: Infill Housing Construction on Desota Avenue  
in Cleveland Heights, Ohio**

Date: \_\_\_\_\_, 2021

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## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, having an address of 40 Severance Circle, Cleveland Heights, Ohio 44118 (the “City”), and **AMATO HOMES I LLC**, a Colorado limited liability company, having an address of 7140 Walton Road, Walton Hills, Ohio 44146 (the “Developer”).

### **RECITALS:**

- A.** The City owns or controls eighteen (18) residential lots (“Lots”) that are currently vacant located along Desota Avenue in the City, the legal descriptions for which Lots are attached as Exhibit A hereto (the “Project Site”).
- B.** Developer proposes to develop the Project Site generally as follows:
  - (i) The Project Site will be developed as a result of the construction of infill single-family, owner-occupied housing as further outlined below and as depicted and described in the proposal from Liberty Development/Amato Homes dated December 11, 2020 in response to the RFQ/RFP (the “Proposal”), both of which are attached in Exhibit B hereto (all of the foregoing being referred to herein collectively as the “Project”);
  - (ii) The City will transfer ownership of the Lots in the Project Site to the Developer at a cost of \$100.00 per Lot, subject to the terms and conditions of a Reverter Clause;
- C.** Developer and the City propose to collaboratively create quality infill housing on the Lots located in the Project Site to attract new residents to and stabilize the surrounding neighborhood. The City and Developer agree that the development of the Project Site shall be completed in a manner which, at a minimum:
  - (i) Results in housing designs and types that complement and are harmonious with the other houses on these streets and the adjacent residential neighborhoods;
  - (ii) Creates positive economic and fiscal benefits for the neighborhood and the City;
  - (iii) Incorporates greenspace, and basic landscaping, into the design and construction of infill housing on each lot;
  - (iv) Effectively incorporates community feedback into the design;
  - (v) Developer is strongly encouraged to achieve the goal of local worker participation by having a majority of workers participating in the construction of this project being residents of Northeast Ohio;
  - (vi) Developer shall incorporate green building standards, alternative energy sources, and green infrastructure into the design and construction of the housing; and
  - (vii) The City strongly desires to pursue, and will likely require, the redevelopment of the lots along Desota Avenue with new owner-occupied single-family detached

dwelling unit infill housing, subject to the conditions negotiated in a final project development agreement.

- D.** Developer currently anticipates that the total project cost is currently expected to be in excess of \$2,500,000.
- E.** The Project is expected to be developed in one phase of construction. The anticipated sales price of each home will likely exceed approximately \$220,000 (subject to increase due to escalating prices of materials).
- F.** An overview of the general plan of finance with respect to the Project, including Developer sources and uses of funds necessary to complete the Project, including the terms and conditions of any construction loan financing from conventional lenders through a line of credit and/or Letter of Credit that will be used to finance the Project, is set forth on **Exhibit C**. Confidentiality of Developer financing shall be granted for information determined to be proprietary in, or of a trade secret, nature. The Developer shall provide the City with a general construction budget including sources and uses of all funds through a line of credit and/or Letter of Credit relating to the Project. The City acknowledges that the Developer expects to create a multi-tiered plan of finance for the Project and that the Developer shall have the right, upon approval by the City of the Developer's financing plans, to grant a security interest, mortgage or other encumbrance (in any event, an "Encumbrance") to secure debt related thereto. The City shall have the right to review all financing of the Project through a line of credit and/or Letter of Credit that will be used to finance the Project. The actual costs incurred by Developer in designing and constructing all of the Improvements, including Developer's debt service as shown in the general plan of finance, are referred to herein collectively as the "Improvement Costs."
- G.** The City will cooperate with the Developer and the buyers / owners of the new houses constructed by the Developer in the review and processing of applications for CRA tax abatement, and take such actions and execute and deliver such documents as may be reasonably required to enable said tax abatement;
- H.** Developer presently intends to substantially complete the Project within 24 months after the Closing (as defined in Section 4 hereof), including transfer of Lots to Developer in order for construction activities to commence. The Developer shall acquire the Lots from the City in phases consisting of four (4) Lots per phase, with the exception of the last phase which will consist of any remaining Lots;
- I.** The City has determined that the Project is in the vital and best interests of the City and the health, safety and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements. The City has further determined that the Project is consistent with the City's Master Plan and Zoning Code;
- J.** The City has determined that it is in the best interest of the City to sell the Lots to Developer for \$100.00 per lot, subject to the conditions of a Reverter Clause, construction financing and any down payment assistance provided by the City, because (i) the City will receive

equivalent economic and non-economic benefits from the Project that equal or exceed the value of the Project Site and Improvements, (ii) Developer will procure one hundred percent (100%) of the Improvement Costs and all of the operational costs of the Improvements, and (iii) the Project will create jobs, stimulate economic growth in the area, attract new residents to the City, and enable the Project Site to be put to its highest and best use, for the benefit of the people of the City;

- K.** The City has determined that eliminating competitive bidding with respect to the City's sale of the Lots to Developer is in the best interest of the public because the sale of the Lots to the Developer is necessary for the Project and for the City to gain the unique benefits described in the Recitals of this Agreement;
- L.** The City has determined that selling the Lots to the Developer is justified because the Improvements will yield an estimated 18 new single-family, owner occupied houses and new residents living on Desota Avenue in the City;
- M.** The City and Developer shall enter into one or more mutually agreeable purchase agreements in substantially the form attached as **Exhibit D** hereto (the "Purchase Agreement"), under which Developer will purchase the Lots and develop single-family, owner-occupied housing on each Lot in each Phase of the Project;
- N.** Execution of this Agreement was authorized by Ordinance No.\_\_\_\_\_, passed by City Council on \_\_\_\_\_, 2021;
- O.** The parties desire to memorialize in this Agreement their understandings as to the various responsibilities and obligations with respect to the Project and certain related matters.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows;

#### **1. INCORPORATION OF RECITALS.**

The Recital clauses set forth above are fully incorporated in this Agreement and specifically made a part hereof, as if fully restated herein, and such Recitals are deemed to be fully effective and a reflection of the agreements and understandings of the parties.

#### **2. DESCRIPTION OF THE IMPROVEMENTS.**

Subject to adjustments that may be made as part of the development and approval of the Final Planning, & Zoning Plans, and Building Plans for the new houses on each Lot (as defined in 5(B) hereof) and any adjustments to these Planning & Zoning Plans and Building Plans that are made in accordance with Section 7(A) hereof, and further subject to any prior termination of this Agreement pursuant to Section 4(C) or 9(A) below, the parties agree that the Project will include the construction of the following Improvements:

***Single-Family, Owner-Occupied Houses.*** The Project shall include 18 new homes, with high-quality amenity packages. The standard features to be available in each house are more fully described in the attached Exhibit H.

### **3. SALE OF LOTS IN THE PROJECT SITE.**

(A) ***Execution of Purchase Agreements.*** The City shall sell and the Developer shall purchase all eighteen (18) of the Lots, at a price of \$100.00 per lot, pursuant to the terms of the Purchase Agreement in substantially the form attached hereto as **Exhibit D.** Under the Purchase Agreement, Developer shall be solely responsible after Closing for all operating costs, insurance premiums, real estate taxes and assessments, and all other costs associated with the Lots and the Improvements. The Developer shall acquire the Lots from the City in phases consisting of four (4) Lots per phase, with the exception of the last phase which will consist of any remaining Lots.

(B) ***Recording of the Purchase Agreements.*** At the request of either party, the parties shall execute and record the Purchase Agreements in the Cuyahoga County Recorder's Office.

### **4. CLOSING ON SALE OF LOTS IN PROJECT SITE.**

#### **(A) *Closing; Conditions to Closing.***

(i) ***Closing.*** Provided the Conditions (as defined in Section 4(B) below) and in the Purchase Agreement have been satisfied, the City and Developer shall take such actions and execute such documents as are reasonably appropriate to consummate the transactions contemplated hereunder and in the Purchase Agreement, all as are sufficient to vest fee simple title to the Lots in Developer ("Closing"), subject, however, to any and all easements, covenants, restrictions and other matters of record existing on the Effective Date affecting the Lots and/or Project Site. The Closing shall occur not later than six (6) months after the Effective Date ("Closing Date"), subject to extension as described below. The Developer shall select the Title Company for the Closing.

(ii) If all of the Conditions have not been satisfied (or waived in writing) by the Closing Date, the Closing Date may be extended by the City for up to three (3) months at the request of Developer, as set forth in Section 4(C) below, and any such request shall not be unreasonably denied as long as Developer is working diligently to satisfy the Conditions. Subject to the provisions in the last paragraph of Section 9(A), Developer will use good faith efforts to complete its due diligence such that, at the Closing, Developer will be in a position to purchase the Project Site as stated in the Purchase Agreement without any environmental, title, financing or other contingencies of any kind.

(B) ***Conditions.*** The Closing for the Lots in each Phase shall not occur until all of the following conditions ("Conditions") have been met:

(i) Developer shall have certified to the City that Developer has secured all funding required by Developer in order to complete the Improvements in substantial accordance with the Budget (as defined in Section 6(C)), the Final Planning & Zoning, Architectural Board of Review ("ABR") and Building Plan approvals and the Final Schedule (each as defined in Section 5);

(ii) Developer shall have received all governmental or other permits, licenses and approvals necessary or appropriate for the commencement of the Project, including those enumerated in Sections 4(B)(i), (viii), and 5 of this Agreement (“Approvals”) and is prepared to commence construction within sixty (60) days of the Closing;

(iii) (reserved)

(iv) Developer shall have entered into a construction agreement with the general and/or subcontractors for the Project;

(v) Developer shall have provided evidence to the City that it has obtained the amounts and types of insurance required to be obtained by Developer as provided in Section 11;

(vi) Developer shall have delivered to the City a detailed construction Budget for the Project as provided in Section 6(C);

(vii) Developer shall have delivered to the City one or more bonds in a form reasonably satisfactory to the City, as required by Section 7(C) hereof;

(viii) Developer shall have delivered to the City (contemporaneously with the Closing) evidence that it has completed its due diligence in accordance with Section 9(A) and shall have delivered to the City a written confirmation that Developer no longer has the right to terminate this Agreement under Section 9(A);

(ix) Developer has updated its due diligence and feasibility studies, tests, reports and analyses and there have been no material changes. If Developer discovers the existence of existing environmental conditions at the Project Site that require remediation pursuant to Legal Requirements, Developer shall have the right to terminate this Agreement in accordance with Section 9 hereof.

(C) ***Failure to Meet Conditions.*** In the event the Conditions have not been met (or waived in writing) by the Closing Date, and the City has not agreed to an extension of such date in accordance with the last sentence of this Section 4(C), each party shall have the right to terminate this Agreement by written notice to the other at any time after such date (but prior to the date on which both parties agree that all Conditions have been met), and upon such notice this Agreement shall terminate, neither party shall thereafter have any rights or obligations under this Agreement. Notwithstanding the foregoing, the City may extend the Closing Date by up to three (3) months at the request of Developer, and such request shall not be unreasonably denied as long as Developer is working diligently to satisfy the Conditions.

## **5. TIMELINE; PREPARATION OF PLANS AND SPECIFICATIONS.**

(A) ***Timeline/Schedule.*** A Project Schedule/Timeline is attached as **Exhibit E.** Prior to execution of the Purchase Agreement, Developer shall deliver to the City a Final Project Schedule/Timeline (the “Final Schedule”), which shall be in the form of a project critical path schedule, and coordinating and integrating the anticipated construction schedules, Developer’s responsibilities, City responsibilities, governmental agency reviews, and other activities as are necessary for timely completion of the Project. The Final Schedule shall indicate proposed sequences and durations, milestone dates, and an estimated completion date. Developer agrees that the Project shall be developed substantially in accordance with the Final Schedule, subject to delays caused by Force Majeure.

(B) ***Preliminary and Final Plan.*** Developer shall be solely responsible for the planning, design, construction, administration, oversight and completion of the Project. At such time as Developer deems appropriate, it shall begin preparing preliminary **plans** for the Project Site. Developer shall submit such preliminary plans to the City’s Director of Planning (“Planning Director”), for review and comment, with copies to the City’s Director of Economic Development. Any objections by the Planning Director shall be submitted in writing to Developer within fifteen (15) business days of receipt of said drawings. The presentation of the development **plans** and the development and approval of the Final Planning & Zoning, ABR and any other City board or commission as appropriate as determined by the City, as well as Building Plans, and the Final Schedule, shall all proceed in accordance with the steps outlined in the City of Cleveland Heights Zoning Code and Building Regulations. None of those approvals is guaranteed by this Agreement. Developer acknowledges that the City is a public office subject to Ohio’s public records laws.

(C) ***Right to Terminate Agreement for Failure to Approve Final Plan.*** The parties agree to work diligently and cooperatively with each other for City approval of the Final Planning & Zoning, ABR and Building Plans, and the Final Schedule. If for any reason the parties, after exercising reasonable efforts, are unable to obtain approval of the City and other governmental authorities as needed by the Closing Date, and that date has not been extended by the City in accordance with Section 4(C), each party shall have the right to terminate this Agreement by giving written notice thereof to the other party no later than sixty (60) days thereafter (but prior to the date on which the Final Planning & Zoning, ABR and Building Plans, and the Final Schedule are approved, whereupon neither party shall thereafter have any further rights or obligations hereunder except as described in Section 8. For purposes of this Section 5(C) and Section 4(B)(i), (viii), the term “approval” means final legislation or administrative action without further appeal or referendum adopted in accordance with the Charter and Ordinances of the City and with standards of other applicable governmental authorities that approves all aspects of the Final Planning & Zoning, ABR and Building Plans, and the Final Schedule.

(D) ***Preliminary Pro Forma.*** Prior to the Closing, Developer shall submit to the City a preliminary pro forma statement of revenues and expenses for the Project following construction, consisting of Developer’s good faith projection of revenues and expenses of the Project following completion, based on sound accounting principles

consistently applied, and including assumptions utilized by Developer in deriving the information contained therein. The content of the pro forma statement shall be treated as confidential and will not be disclosed to third parties unless (1) the City determines in good faith that it is obligated to release the pro forma statement to one or more requesting parties pursuant to applicable law, in which event the City will provide written notice to Developer at the earliest practicable time; or (2) Developer consents in writing to its release. Developer acknowledges that the City is a public office subject to Ohio's public records laws.

## **6. OBTAINING & APPROVING CONSTRUCTION BIDS.**

(A) ***Final Bids.*** Developer shall not solicit bids from contractors or subcontractors that are listed on the Federal Debarred List or the State Debarred List or that are identified as being debarred on the City's Vendor's Performance list. The final bids for the Project, as approved by Developer, are referred to herein as the "Final Bids."

(B) ***Budget.*** Promptly after the approval of the Final Planning & Zoning Plans, ABR and Building Plans, and the Final Schedule contemplated under Section 5(A), Developer shall provide the City with an updated construction budget for the Project specifying all projected costs and expenses of every kind and nature to be incurred in connection with the Project, including all costs of labor, materials, equipment and fixtures needed for completion of the Project and all other costs, fees and expenses relating to construction of the Improvements (as the same may thereafter be updated from time to time during construction, the "Budget"). The content of the Budget shall be treated as confidential and will not be disclosed to third parties unless (1) the City determines in good faith that it is obligated to release the Budget to one or more requesting parties pursuant to applicable law, in which event the City will provide written notice to Developer at the earliest practicable time; or (2) Developer consents in writing to its release. Developer acknowledges that the City is a public office subject to Ohio's public records laws.

## **7. CONSTRUCTION.**

(A) ***Construction.*** Once the parties have approved the Final Planning & Zoning Plans, ABR and Building Plans, and the Final Schedule and the Closing has occurred, and the Developer has received all necessary required permits and approvals, including approval of the Building Plans by the Building Department, Developer shall proceed with construction of the Project within 60 days thereafter unless winter conditions exist, in which case construction shall commence when weather conditions permit. Developer shall thereafter complete construction of the Project in substantial accordance with the Final Planning & Zoning, ABR and Building Plans, and the Final Schedule, provided that Developer may make changes to the Final Planning & Zoning, ABR and Building Plans, and the Final Schedule in accordance with the process set forth in the City's Zoning Code and Building Regulations. Except for assistance to be provided by the City to Developer under this Agreement, and subject to Developer's ability to finalize agreements with its sources of funding, Developer shall be solely responsible for constructing and paying for the Project. Developer reasonably believes as of the date hereof that the sources of funding set forth on **Exhibit C** attached hereto will be adequate

to enable Developer to complete the Project in accordance with the current scope of the Project; subject to cost increases resulting from matters approved in the Final Planning & Zoning, ABR and Building Plans, and the Final Schedule or other circumstances that may change after the date of this Agreement.

The Project shall be performed and completed by Developer, its contractors and subcontractors, or any successors thereof, in a good and workmanlike manner using new, first-class materials in accordance with all federal, state or local laws, statutes, ordinances, building codes, orders, rules and regulations applicable to the Project, whether in force on the Effective Date or enacted thereafter (the "Legal Requirements"). Responsibility for acceptable quantity and quality of work performed rests with Developer. The City makes no warranty relative thereto. Further, Developer agrees not to hold the City liable in any manner for any deficiency in the quantity or quality of work performed or to be performed. All work in any existing and future right of way shall only be done under permit from the City. Developer shall be responsible for obtaining and paying for all necessary permits and licenses and for obtaining all necessary third-party approvals for the Project, including but not limited to, driveway and other access or ingress/egress permits or easements. Developer shall be responsible for all tap-in fees, impact fees or other fees related to procuring or bringing utilities to the Project Site.

Upon the commencement of construction of the Improvements, Developer shall diligently pursue such construction to completion in accordance with the Final Schedule, subject to delays caused by Force Majeure (as defined in Section 12(A)), and shall use its commercially reasonable efforts to avoid delays and resolve disputes. Developer shall give the City notice of the initial occurrence of each and every individual event of Force Majeure within thirty (30) days after the commencement of such event.

Developer will not deviate from the Final Planning & Zoning, ABR and Building Plans, and the Final Schedule, in any material fashion without obtaining approval in accordance with the process set forth in the City of Cleveland Heights' Zoning Code and Building Regulations.

(B) ***Construction Sequencing.*** The sequencing of construction of the Improvements shall be in accordance with the Final Planning & Zoning, ABR and Building Plans, and the Final Schedule.

(C) ***Surety Bonds.*** Prior to commencing construction of the Project, Developer shall provide the City with a payment bond in form and with a surety satisfactory to the City.

(D) ***Applicable Laws.*** Developer shall obtain and maintain all necessary City and other governmental permits, licenses and other approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements relating to development of the Project. By executing this Agreement, the City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits and other approvals from the City's Department of Planning, the City's Department of Public Works, the City's ABR, or any other City board or commission that may be required in connection with the Project.

(E) ***Inspection of Work.*** During construction, the City, its employees and agents, at its own expense, shall have the right at all reasonable times, after written notice to Developer, subject to Developer's reasonable guidelines and in a manner not to unreasonably interfere with or delay construction activities (and subject to such reasonable site safety requirements Developer may impose), to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement and for any other reasonable purpose. The foregoing shall not be deemed as limiting in any way the rights of the City's building inspectors to conduct inspections from time to time and without prior notice, in accordance with normal City inspection procedures. The City shall, at the City's option, be entitled to either (i) receive copies of any and all reports prepared during construction of the Improvements by any construction monitor or lender's representative engaged by or for the benefit of Developer's construction lender, or (ii) engage a separate construction monitor or owner's representative at City's expense to monitor and report to the City on the progress of construction and the compliance of Developer with the terms of this Agreement.

(F) ***Mechanics Liens.*** If a mechanics' lien shall at any time be filed against the Project, Developer shall, within forty-five (45) days after notice of the filing thereof, cause the same to be discharged as a lien against the Project, by bonding or otherwise.

(G) ***Hazardous Materials.*** Developer, its officers, agents, employees, contractors, subcontractors, guests and invitees shall not bring in, on or incorporate into the real property or any of the Project, any asbestos or other hazardous or toxic substance in contravention of any federal, state, county or city health, safety, or sanitation law, ordinance, regulation or rule. If it is determined that Developer has caused or permitted hazardous materials to be brought in, on or incorporated into the Project Site or the Improvements in violation of law, Developer shall fully remediate such condition within thirty (30) calendar days following any determination by any government authority. In the event such remediation reasonably requires a longer period of time to complete, such thirty-day period shall be reasonably extended provided Developer has commenced such remediation within the initial thirty-day period and pursues such remediation with due diligence.

(H) ***Green Infrastructure and Utilization of Alternative Sources of Energy.*** Developer shall design and construct, at its expense, the Project to incorporate a variety of green building components. This shall be demonstrated through indication of meeting the criteria for standards such as the United States Green Building Council Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND), Enterprise Community Partners Enterprise Green Communities, Institute of Sustainable Infrastructure (ISI) Envision, Green Building Initiatives Green Globes, National Association of Home Builders National Green Building Standard, International Living Building Institute Living Building Challenge or equivalent green building/infrastructure program criteria acceptable to the Zoning Administrator. The Project shall make best efforts to integrate various components, but will not be required to

meet specific thresholds and/or achieve a predetermined level of green building (or similar designation).

## **8. FINANCING; FEES AND EXPENSES OF CITY.**

### **(A) *Financing.***

The City acknowledges that Developer expects to create a multi-tiered plan of finance for the Project and that Developer shall have the right to grant a security interest, mortgage or other encumbrance (in any event, an “Encumbrance”) to secure debt related thereto (“Developer Financing”) in Developer’s interest in the Project Site and all of Developer’s right, title and interest in the Improvements and any fixtures, equipment and personal property located therein or thereon. Except as described in Section 3 of this Agreement and this Section 8, no such Encumbrance shall extend to, affect or be a lien upon the estate and interest of the City in the Project Site or any part thereof and any such Encumbrance shall be a lien on the Lots only

Developer has represented to the City that it intends to use various sources of funds to finance the costs associated with the Improvements, as set forth in a general plan of finance and statement of Sources and Uses as set forth on **Exhibit C.** The actual costs incurred by Developer in designing and constructing all of the Improvements, including Developer’s debt service on the various financings related to the Project, are referred to herein collectively as the “Improvement Costs.”

### **(B) *Fees and Expenses.***

Developer will pay all costs and expenses incurred by Developer in connection with the development of the Project (subject to its rights to contest), including, but not limited to, all costs and expenses incurred by Developer in connection with title searches and title insurance, environmental studies and reports, feasibility studies, traffic impact studies and parking studies, appraisals, surveys and plats, architectural and construction costs, financing costs, and all legal fees incurred by Developer.

## **9. DUE DILIGENCE; ECONOMIC FEASIBILITY; COMMUNITY ENGAGEMENT; CITY COOPERATION.**

**(A) *Due Diligence.*** Developer or its designee shall have a period of time commencing on the Effective Date and continuing for 30 days (the “Inspection Period”) to conduct inspections, studies and investigations of the Project. Developer and its agents, representatives and contractors have been granted full access to the land comprising the Project Site pursuant to an Access Agreement dated as of \_\_\_\_\_, 2021 (the “Access Agreement”) as described in **Exhibit F**, for purposes of conducting such physical and environmental inspections, tests and surveys, including without limitation a Phase I environmental survey, soil borings, geotechnical testing, surveys and title searches (collectively, the “Inspections”) of the Project Site as Developer deems necessary or appropriate, in Developer’s sole discretion, to determine the feasibility, costs and physical and other impediments to development of the Project. Developer and City hereby agree the Access Agreement shall remain in full force and effect through the first to occur of the Closing or the termination of this Agreement.

Developer shall allow the City to review any and all test results and reports relating to Inspection Work performed at the Project Site. Developer shall be responsible for any damage to the Project Site caused by Developer or Developer's inspectors or contractors during such Inspections, shall repair and restore the Project Site to its condition immediately prior to said Inspections, and shall indemnify and hold the City harmless from and against any and all costs, claims and liabilities arising therefrom except arising out of pre-existing conditions.

The City shall furnish or make available to Developer upon the Effective Date, all available information with respect to the history and physical and environmental condition of the Project Site which is in the City's possession or control, including without limitation any studies or tests, surveys, plats and title reports. Additionally, the City agrees that between the Effective Date and the Closing Date it will not take any actions or steps that might have a material impact on the environmental condition, soil condition, survey status or title of the Project Site without Developer's prior consent.

Developer agrees that during the Inspection Period it will complete or cause to be completed, at its cost, such market studies and analysis (collectively, "Market Studies") as it deems necessary or appropriate to determine the economic feasibility of the Project as described in this Agreement. Developer shall allow the City to review any and all such Market Studies and analysis.

In the event that Developer is dissatisfied with the results of the Inspections for any reason whatsoever, or determines, based upon the Market Studies, that the Project, or any portion thereof, as described in this Agreement is not economically feasible for the Project Site, Developer may give written notice to the City to such effect and thereafter shall have no obligation or liability with respect to the Project. Alternatively, Developer may propose changes to the nature and scope of the proposed Project or propose an alternate method for addressing the issue discovered as a result of the Inspections. If such changes or alternate method are rejected by the City, Developer may likewise give written notice to the City and thereafter shall have no obligation or liability with respect to the Project.

(B) ***Community Engagement.*** Developer acknowledges that the City considers community engagement to be a critical component of the development process for the Project, and Developer agrees to cooperate with the City to gather input concerning the Project from residents on, and businesses nearby, Desota Avenue and the greater Cleveland Heights community.

(C) ***City Cooperation.*** The City intends to work collaboratively with Developer to refine the Project and to assist Developer as much as possible with streamlining City zoning, permitting and design review and approval processes.

The City will cooperate with Developer in connection with the vacation of existing streets, dedication of new streets, re-platting/reconfiguration of the Project Site, changes in zoning (if applicable) and execution of easement and/or easement modification agreements, or similar recorded or unrecorded instruments with respect to the Project, or that impact the Project, and which are reasonably necessary to facilitate ingress, egress, access to or relocation of utilities, and access and to other public improvements; provided that such cooperation shall not require the City

to expend its own funds in connection with such vacating, dedicating, re-platting/reconfiguration, changes in zoning or execution of easement and/or easement modification agreements.

## **10. TAXES AND IMPOSITIONS; REAL PROPERTY TAX EXEMPTION.**

(A) ***Taxes and Impositions.*** Commencing on the Closing and thereafter, Developer shall pay all real property taxes and assessments (prorated on a lien basis) with respect to the Lots it has acquired directly to the taxing authority before the same become overdue until such time as the new house is sold to the homebuyer. The City will cooperate with Developer to cause all bills and statements for taxes and assessments to be delivered directly to Developer and shall promptly deliver to Developer any such bills and statements which the City receives. Except as otherwise provided in this Agreement or the terms of any financing described in Section 8(A) of this Agreement, Developer shall be permitted to contest any real property taxes or assessments with respect to the Project in accordance with applicable law and procedures. Developer may apply for and receive any and all other incentives available and applicable to the Project from any and all federal, state and local governmental authorities and the City will cooperate with Developer to apply for such incentives.

Developer shall ensure that all income tax payments associated with such work, including that performed by its subcontractors, during construction of the Project, are paid to the City.

## **11. INSURANCE; INDEMNITY.**

(A) ***Insurance during Construction.*** Until such time as all construction has been completed, Developer shall maintain the following insurance: (i) Commercial General Liability insurance of at least Two Million Dollars (\$2,000,000) per occurrence, combined single limit/\$2,000,000 aggregate (through a combination of primary and excess/umbrella coverage), naming the City as an additional insured and providing that the Developer's policy is primary and any City policy is secondary and non-contributing, (ii) customary builder's risk insurance in the amount of one-hundred percent (100%) of the value of the Improvements (exclusive of land and foundation), (iii) worker's compensation insurance in such amount as required by law, and (iv) all insurance as may be required by Developer's lenders. Developer shall also require any contractors and subcontractors working on the Project Site to maintain (x) Commercial General Liability insurance of at least One Million Dollars (\$1,000,000) per occurrence, combined single limit/\$1,000,000 aggregate, naming the City as additional insured and providing that the contractor's or subcontractor's policy is primary and any City policy is secondary and non-contributing, (y) worker's compensation insurance in such amount as required by law, and (z) all insurance as may be required by Developer's lenders. All insurance policies (excluding worker's compensation insurance) shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide

that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Notwithstanding the foregoing, the coverages and limits of insurance to be carried by Developer may be consistent with those required by Developer's lenders and/or as the Project may require, but subject to City approval, which approval shall not be unreasonably withheld or delayed.

(B) ***Waiver of Subrogation in Favor of City.*** Notwithstanding anything in this Agreement to the contrary, Developer hereby waives all claims and rights of recovery, and on behalf of its respective insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Developer shall at all times protect itself against such loss or damage by maintaining adequate insurance. Developer shall cause its respective property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) ***General Indemnity.*** Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, and except to the extent caused by the negligence or willful misconduct of the Indemnified Parties (as defined below) or any one or combination thereof, Developer agrees to defend, indemnify and hold the City, its employees, agents, contractors and subcontractors (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation reasonable attorneys' fees), demands, judgments, liability and damages for personal injury or property damage (excluding diminution in value or claims of eminent domain) asserted against the Indemnified Parties as a result of or arising directly from the acts of Developer or its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with the Project (collectively referred to as "Claims"). Developer shall undertake, at its sole expense and through counsel reasonably satisfactory to the City's Law Director, the defense of the City in any Claims covered by the foregoing indemnification.

(D) ***Survival of Claims.*** Developer's indemnification and defense obligations shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable Legal Requirements.

(E) ***Indemnification for Environmental Matters.*** Developer agrees to indemnify and hold the Indemnified Parties harmless from and against all Claims asserted against any Indemnified Party as a result of the existence on, or release from, the Property, of Hazardous Materials, or arising out of any claim for violation or failure to comply with Legal Requirements concerning environmental protection, as well as wetlands protection laws, applicable to the construction site or its environs in connection with the Project, but only to the extent any of the foregoing are caused by any act of omission or commission of Developer, or any party under Developer's direction, or any of their agents, employees,

independent contractors, invitees, licensees, successors or assignees. Nothing in this Agreement is meant to release, extinguish or otherwise alter or interfere with any rights which the Indemnified Parties may now or hereafter have against any other Person for any environmental liabilities as a result of such Person's former, present or future ownership, occupancy or use of or interest in, any real property included in or in the vicinity of the Project Site.

(F) ***Claims.*** In case any Claim or demand is at any time made, or action or proceeding is brought against or otherwise involving an Indemnified Party in respect of which indemnity may be sought hereunder, the Indemnified Party seeking indemnity promptly shall give notice of that action or proceeding to Developer, who upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the Indemnified Party to give that notice shall not relieve Developer from any obligation under this section unless, and only to the extent, that a failure to give notice materially prejudices the defense of the action or proceeding by Developer. An Indemnified Party may employ separate counsel and participate in the defense of an indemnified Claim, but the fees and expenses of such counsel shall be paid by the Indemnified Party unless (a) the employment of such counsel has been specifically authorized by Developer in writing, (b) Developer has failed to assume the defense and to employ counsel, or (c) the named parties to any such action (including any impleaded parties) include both an Indemnified Party and Developer and such Indemnified Party has been advised by its counsel that there may one or more legal defenses available to it which are different from or additional to those available to Developer, in which case, if the Indemnified Party notifies Developer in writing that it elects to employ separate counsel at Developer's expense, Developer shall not have the right to assume the defense of such action on behalf of such Indemnified Party and Developer shall be responsible for payment of the fees and expenses of such separate counsel. An Indemnified Party seeking indemnity agrees to fully cooperate with Developer, to the extent such cooperation does not prejudice the position of such Indemnified Party, and lend Developer such assistance as Developer shall reasonably request in defense of any claim, demand, action or proceeding. Developer shall not, nor shall any Indemnified Party, be liable for any settlement made without its consent.

(G) ***Successors and Assigns.*** The indemnification set forth in this Section is intended to and shall include the indemnification of all affected officers, officials, directors, employees and agents of each Indemnified Party, respectively, and their successors and permitted assigns. That indemnification is intended to and shall be enforceable thereby to the full extent permitted by law and shall survive the termination of this Agreement.

## **12. DEFAULT; REMEDIES.**

(A) ***Default.*** The occurrence of any of the following shall be an "event of default" under this Agreement:

(i) The dissolution of Developer or the filing of any bankruptcy or insolvency proceedings by or against it which is not dismissed or removed in 90

days, the appointment of a receiver (temporary or permanent) for Developer which is not dismissed or removed in 90 days, the attachment of, levy upon, or seizure by legal process of any property of Developer which is not dismissed or removed in 90 days; or

(ii) The failure of Developer to perform or observe any of its obligations, duties, or responsibilities under this Agreement (including without limitation the failure to timely complete the Improvements), and failure by Developer to correct such failure within thirty (30) days after receipt of written notice thereof from the City; provided, however, that if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, an event of default shall not be deemed to have occurred if Developer commences to cure the default within such thirty day period and thereafter diligently completes such cure; or

(iii) The failure of the City to perform or observe any of its obligations, duties or responsibilities under this Agreement, which continues for sixty (60) days after receipt of written notice thereof from Developer; or

(iv) Any representation or warranty made by Developer herein or any statement made by Developer (as opposed to a third party) in any report, certificate, financial statement, in any agreements or other instruments furnished in connection with this Agreement or the development of the Project shall at any time prove to have been materially false or misleading in any material respect when made or given.

Notwithstanding the foregoing, if, by reason of Force Majeure, Developer is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (ii) or (iii) hereof, Developer shall not be deemed in default during the continuance of such inability. However, Developer shall promptly give notice to the City of the existence of an event of Force Majeure within thirty (30) days after the commencement thereof and shall use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within Developer's discretion. The term "Force Majeure" shall mean, without limitation, the following:

acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; delays caused by City or any governmental authority with respect to permitting, zoning or similar issues; or any cause, circumstance or event, whether similar or dissimilar to the foregoing, not reasonably within the control of Developer; provided that inability to

obtain necessary financing shall not, by itself, constitute an event of Force Majeure.

The declaration of an Event of Default under subsection (i) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

(B) **Remedies.** Upon the occurrence of an event of default by Developer under this Agreement, the City shall be entitled to (i) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of the defaulting party, and (ii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including without limitation pursuing an action for specific performance against the defaulting party. Upon the occurrence of an event of default by the City under this Agreement, Developer will be entitled to enforce the obligation of the City through exercising its rights under law or in equity. Developer shall be liable for all direct costs and damages, including without limitation reasonable attorneys' fees, suffered or incurred by the City as a result of Developer's default under this Agreement or the City's termination of this Agreement. The failure of the City or Developer to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

### **13. NOTICES.**

All notices given by the parties hereunder shall be deemed given if delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:                   City of Cleveland Heights  
   40 Severance Circle  
   Cleveland Heights, Ohio 44118  
   Attention: Economic Development Director

With a copy to:               City of Cleveland Heights  
   40 Severance Circle  
   Cleveland Heights, Ohio 44118  
   Attention: City Manager

And a copy to:               City of Cleveland Heights  
   40 Severance Circle  
   Cleveland Heights, Ohio 44118  
   Attention: Director of Law

To Developer:

And a copy to:

And a copy to:

#### **14. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(A) Developer is a limited liability company duly organized and validly existing under the laws of the State of Colorado, is qualified to do business in the state of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(B) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for therein. This Agreement has by proper action been duly authorized, executed and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, a valid and binding obligation of Developer.

(C) The execution, delivery and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality applicable to Developer, or the organizational documents of Developer, or any mortgage, indenture, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(D) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity or before or by any governmental authority that, if determined adversely to Developer, would have a material impact on Developer's ability to perform its obligations hereunder.

(E) Developer shall use commercially reasonable efforts to take all actions as are necessary to satisfy or fulfill the Conditions listed in Section 4(B) that are to be satisfied by Developer.

(F) The statements made by Developer in the documentation provided by Developer to the City that are descriptive of the Developer or the Project have been reviewed by Developer and do not, to the knowledge of Developer, solely as of the Effective Date, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

The City represents that the City has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed and delivered by the City and all actions necessary have been taken to constitute this Agreement, when executed and delivered, a valid and binding obligation of the City. The City shall use its reasonable best efforts to take all actions as are necessary to satisfy or fulfill the conditions listed in Section 4(B) that are to be satisfied by the City.

## **15. REPORTING REQUIREMENTS; COMMUNICATIONS; PRESS RELEASES.**

(A) ***Submission of Records and Reports; Records Retention.*** Until such time as the Improvements have been completed, Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be reasonably requested by the City pertaining to Developer, the Project, or this Agreement, including without limitation financial statements certified by an officer of Developer, construction contracts and subcontracts, all design documents and drawings, and such other reports and information as may be required for compliance with programs and projects funded by Developer's lender (including periodic reports prepared by any construction inspector reporting to such lender) (collectively, "Records and Reports"). All Records and Reports compiled by Developer and furnished to the City shall be in such reasonable form as the City may from time to time require. The content of the Records and Reports shall be treated as confidential and will not be disclosed to third parties unless (1) the City determines in good faith that it is obligated to release the Records and Reports to one or more requesting parties pursuant to applicable law, in which event the City will provide written notice to Developer at the earliest practicable time; or (2) Developer consents in writing to its release. Developer acknowledges that the City is a public office subject to Ohio's public records laws.

(B) ***City's Right to Inspect and Audit.*** From and after the Effective Date, Developer shall permit the City and its designees and auditors, at the City's cost and expense, to have reasonable access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its reasonable out-of-pocket costs associated with such inspection or audit.

(C) ***Communications and Coordination.*** Attached as **Exhibit G** is the plan for communication and coordination between Developer and the City during the pre-construction planning period and the construction period for the Project, and such plan is incorporated as part of this Agreement.

(D) ***Press Releases.*** Developer agrees not to issue any press releases or make other public announcements with respect to the Project without prior written approval of the City. Except as otherwise required by applicable law, City agrees not to issue any press releases with respect to the Project without prior written approval of the Developer.

(E) ***Litigation Notice.***

(i) Developer shall give the City prompt notice of any action, suit or proceeding by or against Developer at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which Developer has notice, and which, if adversely determined, would materially impair the right or ability of Developer to carry on the business activities of Developer or the right or ability to operate the Project or would materially and adversely affect its ability to perform its obligations hereunder.

(ii) The City shall give Developer prompt notice of any action, suit or proceeding by or against the City at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which the City has notice, and which, if adversely determined, would materially impair the right or ability of the City to carry on the business activities of the City or would materially and adversely affect its ability to perform its obligations hereunder.

**16. DISPUTE RESOLUTION.**

If the parties cannot reach resolution on a matter relating to or arising out of the Agreement, the parties shall endeavor to reach resolution through good faith direct discussions between the parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the parties' representatives are not able to resolve such matter within five (5) business days of the date of first discussion, the parties' representatives shall immediately inform senior executives of the parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the parties shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the parties shall submit such matter to dispute resolution procedures provided herein.

Should the parties be unable to resolve said dispute through good faith negotiations, the dispute shall be decided by arbitration in accordance the Construction Industry Rules of the American Arbitration Association before an arbitrator with substantial experience in construction law. Any arbitration shall provide for the conduct of discovery by both parties pursuant to the Ohio Rules of Civil Procedure. Failure of either party to provide discovery in a pending arbitration shall terminate the agreement to arbitrate upon written notice of termination by the party requesting discovery to the opposing party. Such termination shall divest the arbitrator(s) of jurisdiction and neither party shall be bound by any determination of the arbitrator(s). The arbitrator(s) are not empowered to award punitive damages and each party expressly waives any right to punitive damages. The conduct of any hearing shall be in accordance with the Ohio Rules of Evidence and Civil Procedure and the arbitrator shall apply Ohio law. Nothing contained in this paragraph shall prevent either party from obtaining injunctive relief from a court of competent jurisdiction to obtain provisional relief pending a decision on the merits by the arbitrator(s). The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

## **17. GENERAL PROVISIONS.**

(A) ***Assignment.*** Developer shall not assign its rights or interests under this Agreement without the prior written consent of the City, which shall not be unreasonably withheld, delayed and conditioned; except that Developer's assignment to an affiliate of Developer (with prior written notice to the City), and Developer's collateral assignment of its rights under this Agreement to its lenders for the Project, shall be permitted; provided however that no such assignments by Developer to an affiliate or lender shall relieve Developer of its obligations or liability to the City under this Agreement.

(B) ***Entire Agreement; Conflicting Provisions.*** This Agreement (including the exhibits hereto) and the other agreements referred to herein contain the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

(C) ***Amendments and Supplements.*** Recognizing the likelihood of changing conditions (such as demand and supply factors), the need for development of the Final Planning & Zoning, ABR and Building Plans, and the Final Schedule and the need to finalize terms and conditions of financings relating to the Project, the parties agree to review and consider in good faith amendments to this Agreement as necessary or appropriate. This Agreement may be amended only by a written amendment signed by all parties. The City agrees to reasonably consider any requests for amendments to this Agreement in a manner requested by Developer's lender.

(D) ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of the City of Cleveland Heights and the State of Ohio, including but not limited to public records and open meetings laws. Subject to the provisions of Section 16 above, all actions regarding this Agreement shall be brought in the Cuyahoga County Court of Common Pleas, and Developer agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement. The Developer agrees that it will comply with all applicable federal, state and local laws with regard to housing opportunities and fair employment practices and will not discriminate on the basis of the protected classes identified in Section 749.01 of the Cleveland Heights Codified Ordinances (age, race, color, religion, sex, familial status, national origin, disability, sexual orientation, or gender identity or expression) in connection with the construction or sale of housing or otherwise pursuant to or in connection with the Project or this Agreement.

(E) ***Binding Effect.*** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns. Each party to this Agreement hereby represents and warrants that it is executing this Agreement with the full and proper authority and that the

parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement.

(F) ***Captions.*** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) ***Severability.*** If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) ***No Recording.*** This Agreement shall not be recorded in the Cuyahoga County Recorder's office unless the parties otherwise mutually agree to do so.

(I) ***Time.*** Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement, provided that the time periods for the performance of Developer's obligations shall be extended for delays caused by Force Majeure as described in Section 12 hereof.

(J) ***No Third-Party Beneficiaries.*** The parties hereby agree that, except for such rights of Developer's lender as may be set forth in documents acknowledged by the City, no third-party beneficiary rights are intended to be created by this Agreement.

(K) ***No Brokers.*** The parties represent that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(L) ***Official Capacity.*** All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity. No official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount or amounts which may become due to Developer or any successor to Developer or on any obligations under the terms and conditions of this Agreement.

(M) ***Contingency for Legislative Authorization from City Council.*** Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement if for any reason City Council does not pass any and all additional ordinances as may be necessary for the City to enter into any amendments to this Agreement.

(N) ***Waiver.*** No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty to be observed by the other party.

(O) ***Termination Upon Completion.*** Upon completion of construction of the Project in substantial accordance with the terms of this Agreement, this Agreement shall terminate and be void and of no further force and effect except as otherwise set forth in this Agreement including, but not limited to, the provisions of Section 11 hereof. The City shall execute any reasonable certificates requested by Developer to memorialize such termination, provided that the execution of such document or documents shall not be a condition to such termination.

(P) ***Agency.*** Notwithstanding anything herein to the contrary, Developer is not the agent of the City, and shall never be deemed to be acting in such capacity.

(Q) ***Confidentiality.*** Developer acknowledges that the City is a public office subject to Ohio's public records laws, but Developer may designate in writing certain documents or information submitted by it in relation to this Agreement as confidential. If Developer makes such designation, the documents or information shall be treated as confidential and will not be disclosed to third parties unless (1) the City determines in good faith that it is obligated to release them to one or more requesting parties pursuant to applicable law, in which event the City will attempt to notify Developer and will provide written notice to Developer at the earliest practicable time; or (2) Developer consents in writing to the release.

(R) ***Exhibits.*** The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - Legal Description of Lots
- Exhibit B - Project Site, RFQ/RFP, and Proposal
- Exhibit C - Plan of Finance / Sources & Uses
- Exhibit D - Purchase Agreement / Reverter Clause
- Exhibit E - Project Schedule / Timeline
- Exhibit F - Access Agreement
- Exhibit G - Plan for Communication and Coordination between Developer and City
- Exhibit H - Description of Standard Features in Each House Constructed

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Executed by the parties on the dates indicated below, effective as of the latest of such dates (the “Effective Date”).

**CITY OF CLEVELAND HEIGHTS, OHIO**

By: \_\_\_\_\_  
\_\_\_\_\_, City  
Manager

Date: \_\_\_\_\_

**AMATO HOMES I, LLC, A COLORADO  
LIMITED LIABILITY COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
City Law Director

### **CITY'S FISCAL OFFICER CERTIFICATE**

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment or expenditure for the attached agreement between Amato Homes I LLC and the City of Cleveland Heights has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

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\_\_\_\_\_, Director of Finance

Date: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTIONS FOR LOTS**

**DESOTA NEIGHBORHOOD INFILL HOUSING LOTS**

**ADDRESSES AND PARCEL NUMBERS**

3266 Desota	684-31-039
3286 Desota	684-31-034
3294 Desota	684-31-032
3308 Desota	684-28-099
3317 Desota	684-28-094
3320 Desota	684-28-102
3321 Desota	684-28-092
3324 Desota	684-28-103
3328 Desota	684-28-104
3332 Desota	684-28-105
3354 Desota	684-28-109
3369 Desota	684-28-082
3380 Desota	684-29-048
3396 Desota	684-29-051
3413 Desota	684-29-069
3417 Desota	684-29-068
3420 Desota	684-29-056
3421 Desota	684-29-067
3427 Desota	684-29-066

## **EXHIBIT B**

### **PROJECT SITE PLAN / RFQ/RFP / PROPOSAL**

On file with the Economic Development Department:

Site Plan

<https://www.clevelandheights.com/DocumentCenter/View/8615/Map2-DesotaVacantLots>

RFQ/RFP

<https://www.clevelandheights.com/DocumentCenter/View/8635/Neighborhood-Redevelopment-Program---Phase-I---RFQ-RFP---FINAL---10-6-2020?bidId=>

Proposal

<https://www.clevelandheights.com/DocumentCenter/View/8860/Liberty-Development-Amato-Homes-NRP-Phase-1-RFQ-RFP-Response?bidId=>

**EXHIBIT C**

**PLAN OF FINANCE / SOURCES & USES**

[SEE ATTACHED]

# The Challenger Group Inc.

To whom it may concern:

Amato Homes I, LLC is a subsidiary of GTG Holdings LLC. The Challenger Group Inc. (TCG) wholly owns GTG Holdings LLC and is based in Colorado Springs Colorado.

TCG has three main operations as follows:

1. Residential homebuilding through its homebuilding subsidiaries. ([www.mychallengerhomes.com](http://www.mychallengerhomes.com))
2. Commercial development (apartments). ([www.goodwinknight.com](http://www.goodwinknight.com))
3. Modular Home Manufacturing for use in our homebuilding or commercial development businesses.

We provide financing to our homebuilding subsidiaries and other corporate support from our headquarters in Colorado Springs. We have sufficient capital via our corporate lines of credit to purchase lots under the Amato Homes I entity. We are extremely confident in Frank's ability to build quality homes and make life better in the Greater Cleveland Ohio market.

If you have any questions or would like more information, please visit our websites above for Challenger Homes (our largest homebuilder) and Goodwin Knight (our commercial developer) or feel free to reach out to me directly.

Sincerely,



Jordan Savage CPA, CMA, CFE

Chief Financial Officer

[jsavage@goodwinknight.com](mailto:jsavage@goodwinknight.com)

Cell Phone: 719-649-5266

## **EXHIBIT D**

### **PURCHASE AGREEMENT / REVERTER CLAUSE**

#### **PURCHASE AND SALE AGREEMENT (Desota Avenue – Vacant Lots)**

This Purchase and Sale Agreement (the “**Agreement**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), between **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, having an address at 40 Severance Circle, Cleveland Heights Ohio 44118 (the “**City**” or “**Seller**”) and **AMATO HOMES I LLC**, a Colorado limited liability company, having an address of 4212 Devonshire, Akron, Ohio 44321 (“**Buyer**”).

#### **WITNESSETH:**

WHEREAS, Seller is the owner of certain lots currently situated along Desota Avenue in the City of Cleveland Heights, Cuyahoga County, Ohio, comprising eighteen (18) vacant lots (collectively, the “**Lots**” and individually, a “**Lot**”), as more fully described in the Development Agreement (as hereinafter defined); and

WHEREAS, Seller and Buyer have entered into a certain development agreement (the “**Development Agreement**”) under the terms of which Buyer is to construct single family homes on one or more Lots, subject to the terms and conditions of the Development Agreement which also requires that Seller sell and Buyer purchase one or more Lots on which the single-family homes are to be constructed.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, and in consideration of the foregoing and of the mutual covenants contained herein, as well as other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, covenant and agree as follows:

1. Preambles. The foregoing definitions and preambles are incorporated into the terms of this Agreement.

2. Conveyance of Lot(s). Seller shall, on the Closing Date (defined below), subject to the terms of this Agreement, convey to Buyer by quit claim deed (the “**Deed**”), free and clear of all liens and encumbrances of any and every nature except the Permitted Exceptions (as defined below), good and marketable fee simple title to the Lot(s), the legal description for which is attached hereto as Exhibit A and incorporated herein by reference. The title company shall be selected by the Buyer subject to the approval of the Seller (“**Title Company**”). Buyer and Seller hereby designate the Title Company to serve as escrow agent (the “**Escrow Agent**”) in connection with this Agreement.

A fully executed version of this Agreement shall serve as escrow instructions and shall be subject to the usual conditions of acceptance of the Escrow Agent, so long as the same are not inconsistent with any of the terms hereof.

3. Closing Date; Closing Documents.

(a) The closing (“**Closing**” or “**Closing Date**”) shall take place at a location mutually acceptable to Buyer and Seller on the date that is forty-five (45) days after the Effective Date.

(b) Seller shall deliver exclusive possession of the Lot(s), free and clear of all occupants and tenancies to Buyer on the Closing Date. To the extent necessary, Seller, at Seller’s expense, shall cause the eviction of any tenants occupying all or any portion of the Lot(s).

(c) At Closing, the parties agree to execute and/or deliver, or cause to be executed and delivered, all documentation as may reasonably be required by the Title Company to issue an ALTA Owner’s Policy of Title Insurance in an amount not less than the Purchase Price, which policy shall insure Buyer’s marketable title in fee simple to the Lot(s), and shall not contain any exception other than the Permitted Exceptions and those which may hereafter be approved by Buyer in writing (the “**Title Policy**”).

(d) On the Closing Date, the Escrow Agent shall complete this transaction by:

- i. paying the Purchase Price to Seller in accordance with the terms set forth in Section 4(a) below, adjusted as set forth on the Settlement Statement;
- ii. filing the Deed with the Cuyahoga County Fiscal Officer (which shall be deemed delivery to Buyer);
- iii. issuing the Title Policy and forwarding same to Buyer;
- iv. charging the parties respectively for those costs and expenses to be paid by them pursuant to this Agreement; and
- v. preparing and forwarding to both parties one signed copy of the Escrow Agent’s Settlement Statement showing all receipts and disbursements of the escrow.

In the event the Escrow Agent is unable to simultaneously perform all of the instructions set forth above, it shall so notify Buyer and Seller and retain all funds and documents in its possession pending receipt of further instructions jointly issued by Buyer and Seller.

4. **Purchase Price.** Subject to adjustments as hereinafter described, Buyer shall purchase the Lot(s) and pay therefor the sum of One Hundred Dollars and 00/100 Dollars (\$100.00) per Lot (the “**Purchase Price**”).

5. **Closing Adjustments, Costs and Expenses.**

(a) Seller covenants and agrees that it shall pay for the following costs: (i) cost of the Deed preparation; (ii) any and all transfer taxes; (iii) one-half of the premium cost for the Title Policy; (iv) one-half of the fees, costs and expenses of the Escrow Agent, for its escrow services; and (v) all matters of title clearance necessary to deliver title to the Lot(s) in accordance with this Agreement.

(b) Buyer covenants and agrees that it shall pay for the following costs: (i) the costs of the Survey, if any; (ii) the costs of the initial title search and the Title Commitment (defined below); (iii) one-half of the premium cost for the Title Policy, plus the costs of any endorsements requested by Buyer; (iv) one-half of the fees, costs and expenses of the Escrow Agent, for its escrow services; (v) the recording charges incident to the filing of the Deed and Mortgage for the Lot(s); and meet all conditions described in the Development Agreement.

(c) All real estate taxes assessed against the Lot(s) shall be prorated as of the Closing Date. Seller shall be responsible for all taxes applicable up to the Closing Date, and Buyer shall be responsible for taxes applicable to the period from and after the Closing Date. This Section 5(c) shall survive the Closing Date and the recording of the Deed.

(d) Seller shall pay for all municipal charges for sewage, water and other utility services up to the Closing Date, and cause final meter readings to be made of same.

6. **Title.**

(a) Within ten (10) days after the Effective Date, Buyer shall obtain, at Buyer’s sole cost and expense, a commitment from the Title Company for the issuance of the Title Policy (the “**Title Commitment**”) in the amount of the Purchase Price and at its option, and at no cost and expense to Seller, a current ALTA survey to be certified to Buyer and the Title Company (the “**Survey**”). Included with the Title Commitment shall be a copy of all exceptions listed on Schedule B-2 thereof. As soon as practicable after receipt of the Title Commitment and Survey, but in no event later than the end of the Due Diligence Period, Buyer shall furnish Seller with a copy of the Title Commitment and Survey and notify Seller of the liens or encumbrances on or against the Lot(s) to which it objects (“**Defects Notice**”). Buyer’s failure to notify Seller of any defects to which it objects within the time period provided in the preceding sentence shall constitute an agreement by Buyer that the encumbrances and matters listed or identified on the Title Commitment and/or Survey shall constitute Permitted Exceptions. “**Permitted Exceptions**”

shall also include (i) real estate taxes and assessments that are a lien but not yet due and payable, (ii) zoning ordinances, (iii) any matters shown on the Survey not objected to by Buyer, (iv) a reverter provision as set forth in the form of the Deed attached as **Exhibit B** and incorporated herein by reference; and (iv) any matters to which Buyer objects that Seller fails or refuses to cure, if Buyer does not elect to terminate this Agreement.

(b) Not later than ten (10) days after receipt of the Defects Notice from Buyer (“**Seller’s Response Period**”), Seller shall notify Buyer whether or not Seller will cure such defects and the actions, if any, Seller intends to take to cure the defects to which Buyer objects. If Seller elects not to cure the identified defects (other than Permitted Exceptions, which Seller shall not be required to cure), then Buyer may terminate this Agreement by written notice to the Seller given within ten (10) days after the earlier of (i) the expiration of Seller’s Response Period or (ii) Seller’s notice to Buyer that it will not cure all of the identified defects. If Buyer fails to deliver written notice of termination to Seller within such ten (10) day period, then Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 6(b). If Buyer does not terminate this Agreement, then Buyer shall accept title with those defects that Seller has elected, in its notice to Buyer, not to cure, and such items shall also constitute Permitted Exceptions. In the event Seller fails to timely respond to the Defects Notice, Seller shall be deemed to have agreed not to remedy or cure all defects specified in the Defects Notice on or before the Closing Date. If Buyer timely issues the Defects Notice, then the Due Diligence Period and the Closing Date shall be extended for the amount of time reasonably necessary until such time as the defects are resolved pursuant to the provisions of this Section 6, provided that Seller shall diligently pursue resolution of any such defects.

(c) Notwithstanding anything contained in this Agreement to the contrary, Seller shall be obligated to cure, remedy or satisfy at or prior to Closing, any mortgages or monetary judgments of a liquidated amount (collectively, “**Monetary Liens**”) on or against the Lot(s) regardless of whether Buyer identifies them in Buyer’s Defects Notice.

## 7. Conditions of Buyer’s Obligation to Purchase.

(a) Buyer is purchasing the Lot(s) in its or their “AS IS, WHERE IS” CONDITION, WITH ALL DEFECTS AND FREE FROM ALL REPRESENTATIONS OR WARRANTIES WHATSOEVER EXCEPT AS MAY BE SET FORTH IN THIS AGREEMENT; provided, however, that Buyer’s obligation to purchase the Lot(s) is conditioned upon all of the following (the “**Conditions**”) (i) Buyer’s satisfaction, in its sole discretion, that the Lot(s) is properly zoned under any applicable laws and ordinances to permit Buyer’s intended use, (ii) Buyer’s satisfaction, in its sole discretion, that the Lot(s) is properly served with sufficient sanitary sewer, storm sewer, water, gas, electricity, telephone and other utilities to permit Buyer’s intended use, (iii) at Buyer’s option, Buyer’s receipt of an environmental assessment report satisfactory, in Buyer’s sole discretion, with respect to any recognized environmental conditions affecting the Lot(s), (iv) Buyer’s satisfaction, in its sole discretion, that Buyer will be able to obtain all necessary or desirable governmental approvals and/or permits in connection with Buyer’s intended use of the

Lot(s), and (v) Buyer's satisfaction, in its sole discretion, with all of all investigations it makes of the Lot(s) and matters affecting Buyer's intended use of the Lot(s) during the Due Diligence Period (the "**Due Diligence Matters**"). Buyer shall have the right, in Buyer's sole and absolute discretion, to obtain a Phase I environmental report and a Phase II environmental report, if necessary, with respect to the Lot(s).

(b) Buyer shall have from the Effective Date until the date that is thirty (30) days after the Effective Date (the "**Due Diligence Period**") to review the Due Diligence Matters and Seller's Due Diligence Materials (as hereinafter defined). If Buyer is not satisfied with the status of the Due Diligence Matters or Seller's Due Diligence Materials, in Buyer's sole and absolute discretion, Buyer shall have the right to terminate this Agreement for any reason or no reason at all, by delivery of written notice to Seller prior to 5 pm EST on the last day of the Due Diligence Period, in which case the parties hereto shall have no further obligations hereunder.

(c) Seller agrees to assist Buyer in reviewing the Due Diligence Matters. Furthermore, within ten (10) days after the Effective Date, Seller shall deliver to Buyer any and all information in Seller's possession with respect to the Lot(s), including, but not limited to, any existing title commitments and policies, insurance policies, certificates of occupancy, surveys, engineering reports, Lot(s) condition reports, technical reports, environmental reports, service contracts and notices received from any governmental authority within the twelve (12) months preceding the Effective Date, along with any additional information that may be readily available to Seller at Buyer's request from time to time during the term of this Agreement (collectively, "**Seller's Due Diligence Materials**").

8. Insurance and Risk of Loss. Prior to the Closing Date, all risk of loss or damage to the Lot(s), including, without limitation, loss by fire, windstorm or other casualty, shall rest with Seller. If prior to the Closing Date the Lot(s) or any part thereof is damaged as a result of fire, windstorm or other casualty, Buyer shall have the option to:

(a) cancel this Agreement and, notwithstanding any provision to the contrary set forth in this Agreement, receive a refund of any sums paid on account of the Purchase Price, in which event neither party shall have any further liability or obligation to the other hereunder; or

(b) enforce this Agreement and obtain an assignment from Seller of all insurance proceeds payable as a result of such loss or damage to the Lot(s) (not to exceed the Purchase Price), and all insurance proceeds previously paid in connection with such casualty shall be paid over to Buyer, together with the amount of any deductible which shall be paid by Seller to Buyer.

Buyer shall have twenty (20) Business Days (hereinafter defined) after Buyer's receipt of written notice from Seller's insurer of the amount of insurance proceeds that will be payable as a result of such casualty and damage within which to make its election under this Section, and to accomplish the foregoing, Buyer shall have the right to adjourn and extend the Closing Date until

not later than fifteen (15) days after the expiration of such twenty (20) day period. The provisions of this Section 8 shall survive the Closing and delivery of the Deed.

9. (Intentionally Deleted)

10. Seller's Covenants; Maintenance and Repair of Lot(s).

Seller shall, through the Closing Date:

(a) pay, in the normal course of business, all sums due for work, materials or service furnished or otherwise incurred in the ownership of the Lot(s) prior to Closing;

(b) not make or permit to be made any alterations, improvements or additions on the Lot(s) without the prior written consent of Buyer;

(c) not enter into any lease or license or letter of intent to lease or license any portion of the Lot(s);

(d) not enter into any agreements which would bind Buyer or the Lot(s) after Closing.

11. Seller's Representations and Warranties. Seller represents and warrants that the following are true and correct on the date hereof and shall be true and correct on the Closing Date:

(a) Seller has the full right, power and authority to sell, convey and assign the Lot(s) and to carry out Seller's obligations hereunder. The joinder of no person or entity will be necessary to convey the Lot(s) fully and completely to Buyer on the Closing Date.

(c) This Agreement and each document to be delivered hereunder, when duly executed and delivered, will be valid, legal and binding obligations of Seller or any other signatory enforceable in accordance with their respective terms.

(b) The Seller is not a foreign person as defined in Section 1445(f) (3) of the Internal Revenue Code of 1986, as amended, and Seller shall deliver to Buyer on the Closing Date a Certificate of Non-Foreign Status, in a form to be reasonably designated by Buyer.

12. Buyer's Representations and Warranties. Buyer represents and warrants that the following are true and correct on the date hereof and shall be true and correct on the Closing Date:

(a) Buyer has been duly organized and exists in good standing under the laws of the State of Ohio and has the full right, power and authority to buy the Lot(s) and to carry out Buyer's obligations hereunder;

(b) All requisite corporate or other actions necessary to authorize Buyer to enter into this Agreement and to perform its obligation hereunder have been taken, and the joinder of no person or entity other than Buyer is necessary to the execution and delivery of such agreements;

(c) The consummation of the contemplated transaction will not conflict with, or with or without notice or the passage of time, or both, result in a breach of any of the terms or provisions of, or constitute a default under any agreement or instrument to which Buyer is a party; and

(d) This Agreement and each document to be delivered hereunder, when duly executed and delivered will be valid, legal and binding obligations of Buyer or such signatory, enforceable in accordance with their respective terms.

13. Broker. Seller and Buyer each represent and warrant to the other that they have not been represented by any broker in connection with the sale of the Lot(s), and no real estate commissions, selling commissions or finder's fees are due to any other broker or finder by virtue of any act of Seller or Buyer or any agent acting on their behalf.

14. Access to the Lot(s). Throughout the entire term of this Agreement, Buyer and its employees and contractors, upon prior notice to Seller, shall have access to and the right to enter the Lot(s) and any part thereof for the purposes of making surveys, plans, soil tests and borings, water tests and other environmental and/or engineering tests on the same, subject to the execution and delivery by the parties of the form of Access Agreement attached to the Development Agreement. Seller shall have the right to have a representative present during all on-site investigations of the Lot(s) by Buyer. Buyer shall, at its sole cost and expense, repair any direct damage caused by any tests or inspections.

15. (Intentionally Deleted)

16. Notices. Any notices required or permitted to be given under the terms of this Agreement shall be in writing, and shall be deemed given when received only if sent to the following addresses by (a) certified or registered United States Mail, return receipt requested, postage prepaid, or (b) Federal Express or a comparable overnight or next business day courier service, or (c) hand delivered, at the following addresses (or to such other or additional addresses as a party may designate by notice):

BUYER: Amato Homes I LLC  
7140 Walton Road  
Walton Hills, Ohio 44146

Attention: Francis Amato

SELLER: City of Cleveland Heights  
40 Severance Circle

Cleveland Heights, Ohio 44118  
Attention: Economic Development Director

With a copy to: City of Cleveland Heights  
40 Severance Circle  
Cleveland Heights, Ohio 44118  
Attention City Manager

And a copy to: City of Cleveland Heights  
40 Severance Circle  
Cleveland Heights, Ohio 44118  
Attention: Director of Law

Notice shall be deemed given on the date of receipt (or refusal by the recipient) as evidenced by return receipt or other couriers standard delivery documentation.

17. Modifications and Termination. This Agreement cannot be changed or terminated orally or in any manner other than by a written agreement executed by both parties.

18. Construction. This Agreement shall be governed by and construed in accordance with the laws of Ohio. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

19. Merger of Prior Agreements and Representations. Except for the Development Agreement, which shall remain in full force and effect: (a) this Agreement constitutes the entire agreement between the parties hereto with respect to the sale and purchase of the Lot(s), and (b) it is understood and agreed that all undertakings and agreements heretofore made between Buyer and Seller are merged herein.

20. Survival. Notwithstanding any presumption to the contrary, all covenants, representations and warranties contained in this Agreement shall not survive Closing unless otherwise specifically provided herein.

21. Seller's Default. If Seller defaults hereunder, which default shall consist of the failure of Seller to fulfill any of obligations of Seller herein contained, and Seller does not cure such default within ten (10) days after written notice from Buyer, Buyer may pursue all remedies available to Buyer at law or in equity, including without limitation an action for specific performance.

22. Buyer's Default. In the event of default by Buyer hereunder, and Buyer does not cure such default within ten (10) days after written notice from Seller. Seller may pursue all remedies available to Buyer at law or in equity, including without limitation an action for specific performance.

23. Time of the Essence. Time is of the essence as to all matters set forth herein.

24. Counterparts. This Agreement may be signed in one or more counterparts each of which for all purposes shall be deemed to be an original.

25. Assignment. This Agreement may not be assigned by Buyer without Seller's prior consent. Seller may not assign its obligations under this Agreement other than by operation of law, except with the prior written consent of Buyer. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

27. Waiver of Jury Trial. IT IS MUTUALLY AGREED BY AND BETWEEN SELLER AND BUYER THAT THE RESPECTIVE PARTIES HERETO SHALL AND DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS WAIVER AND HAS BEEN ADVISED BY COUNSEL AS NECESSARY OR APPROPRIATE. THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY BY THE PARTIES HERETO.

28. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns (to the extent permitted pursuant to Section 25 above).

29. Miscellaneous. The term "**Business Day**" shall mean any day other than a Saturday, a Sunday or a legal holiday on which banks are not open for business in Cleveland, Ohio.

[Signature Page follows]

**IN WITNESS WHEREOF**, the Buyer and Seller have caused this Agreement to be executed the day and year above written.

**SELLER:**

CITY OF CLEVELAND HEIGHTS, an Ohio  
municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**BUYER:**

AMATO HOMES I LLC, a Colorado limited  
liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBITS**

A – Legal Description  
B – Deed with Reverter Provision

**EXHIBIT A**

**Legal Description**

**EXHIBIT B**

**Deed with Reverter Provision**

*[see next page]*

## **EXHIBIT B**

### **QUIT-CLAIM DEED**

**(with Right of Reverter)**

**THE CITY OF CLEVELAND HEIGHTS**, an Ohio municipal corporation (“**Grantor**”), for valuable consideration paid, grants to **AMATO HOMES I LLC**, a Colorado limited liability company (“**Grantee**”), whose tax mailing address is 4212 Devonshire, Akron, Ohio 44321, the following REAL PROPERTY:

The description of the property is as follows:

See Exhibit A attached hereto.

Property Address: \_\_\_\_\_

Permanent Parcel No.: \_\_\_\_\_

Prior Instrument Reference: \_\_\_\_\_

By acceptance of this Deed, as evidenced by its recording with the Cuyahoga County Fiscal Officer, Grantee, for itself and its successors and assigns, covenants and agrees with Grantor as follows, all of which shall be deemed covenants running with the land binding on all future owners or holders of all or any interest in the Real Property conveyed hereby: (a) that construction of a single family home shall commence on the Real Property (meaning that a building permit has been duly issued and that commencement of the excavation of footers or a basement has occurred) not later than ninety (90) days after the date of recordation of this Deed; (b) that completion of the construction of a single family home on the Real Property (meaning that a certificate of occupancy has been duly issued) shall occur not later than one hundred eighty (180) days after the commencement of construction of the single family home; and (c) that in the event either or both of the foregoing covenants is or are not fully satisfied, met and complied with by Grantee or any subsequent transferee, the title, right of possession and all other rights transferred hereunder to Grantee shall, at the option of Grantor, revert to Grantor sixty (60) days after written demand to this effect is made to Grantee at its tax mailing address above. Filing of a true copy of the foregoing written demand of reverter with the Cuyahoga County Fiscal Officer shall be and be deemed to be conclusive evidence that reverter of title, right of possession and all other rights transferred to

Grantee hereunder have reverted to Grantor without further action on the part of Grantor, Grantee, or any other party. In the event the foregoing covenants or the enforcement thereof is found or deemed to be invalid, then each of the foregoing clauses (a) and (b) shall be construed to be conditions, upon breach of which Grantor may exercise its option to cause title, right of possession and all other rights transferred hereunder to Grantee to revert to Grantor.

(no further text this page; the next page is the signature page)

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**GRANTOR:**

**THE CITY OF CLEVELAND HEIGHTS,  
an Ohio municipal corporation**

By: \_\_\_\_\_  
Print  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

This is an acknowledgment clause. No oath or affirmation was administered to the signer.

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
(date) by \_\_\_\_\_, \_\_\_\_\_ of The City of Cleveland Heights, on behalf  
of the municipal corporation.

NOTARY PUBLIC  
My Commission Expires \_\_\_\_\_

Approved as to form:  
City of Cleveland Heights

By: \_\_\_\_\_  
William R. Hanna, Director of Law

**EXHIBIT A**  
**Legal Description**

**EXHIBIT E**  
**PROJECT SCHEDULE / TIMELINE**  
**[SEE ATTACHED]**



7140 Walton Road, Walton Hills, OH 44146 • 7196495266

## Schedule - List - 1575

1-118 of 118 items 250 / page

ID #	Title	Phase	Duration	Start	End	Assignees	Predecessors	Actions
1	● Plot Plan With Topo	--	1 day	Mar 8, 2022	Mar 8, 2022	Atwell LLC	<a href="#">16</a>	
2	● Submit Permit	--	1 day	Mar 22, 2022	Mar 22, 2022	Francis Amato	<a href="#">16</a>	
3	● Deliver Porta John	--	1 day	Mar 29, 2022	Mar 29, 2022	P and J Sanitation, Inc.	<a href="#">16</a>	
4	● Electric Application	--	1 day	Mar 29, 2022	Mar 29, 2022	Francis Amato	<a href="#">16</a>	
5	● Install Basin Bags (SWP3)	--	1 day	Mar 29, 2022	Mar 29, 2022	Ross Maintenance LLC	<a href="#">16</a>	
6	● Install Silt Fence	--	1 day	Mar 29, 2022	Mar 29, 2022	Ross Maintenance LLC	<a href="#">16</a>	
7	● Install Temp Pole	--	1 day	Mar 29, 2022	Mar 29, 2022	RO-Check Electric, Inc	<a href="#">16</a>	
8	● NOI	--	1 day	Mar 29, 2022	Mar 29, 2022	Francis Amato	<a href="#">16</a>	
9	● Stake Lot	--	1 day	Mar 29, 2022	Mar 29, 2022	Atwell LLC	<a href="#">16</a>	
10	● Lot Takedown	--	1 day	Apr 1, 2022	Apr 1, 2022	Francis Amato	<a href="#">16</a>	
11	● Install Sewer	--	1 day	Apr 4, 2022	Apr 4, 2022	Precision Snow and Ice Mana	<a href="#">16</a>	
12	● Install Temp Drive	--	1 day	Apr 4, 2022	Apr 4, 2022	Precision Snow and Ice Mana	<a href="#">16</a>	

13	● Install Water	--	1 day	Apr 4, 2022	Apr 4, 2022	Precision Snow and Ice Mana	<a href="#">16</a>
14	● PCIR Inspection	--	1 day	Apr 4, 2022	Apr 4, 2022	<b>Francis Amato</b>	<a href="#">16</a>
15	● Temp Drive Stone	--	1 day	Apr 4, 2022	Apr 4, 2022	Redland Quarries NY Inc DBA	<a href="#">12</a>
16	● Dig Foundation	--	1 day	Apr 4, 2022, 2:31 PM	Apr 4, 2022	Precision Snow and Ice Mana	
17	● Footer Gravel	--	1 day	Apr 5, 2022	Apr 5, 2022	Eco-Seal Home Solutions	<a href="#">19</a>
18	● Form Inspect Footers	--	1 day	Apr 5, 2022	Apr 5, 2022	Progressive Poured Walls, LL	<a href="#">16</a>
19	● Pour Footers	--	1 day	Apr 5, 2022	Apr 5, 2022	Progressive Poured Walls, LL	<a href="#">18</a>
20	● Form/Inspect Walls	--	1 day	Apr 6, 2022	Apr 6, 2022	Progressive Poured Walls, LL	<a href="#">19</a>
21	● Pour Walls	--	1 day	Apr 8, 2022	Apr 8, 2022	Progressive Poured Walls, LL	<a href="#">20</a>
22	● Strip Walls	--	2 days	Apr 11, 2022	Apr 12, 2022	Progressive Poured Walls, LL	<a href="#">21</a>
23	● Waterproofing	--	1 day	Apr 13, 2022	Apr 13, 2022	Eco-Seal Home Solutions	<a href="#">22</a>
24	● Deliver Backfill Stone	--	1 day	Apr 14, 2022	Apr 14, 2022	Redland Quarries NY Inc DBA	<a href="#">23</a>
25	● Backfill/Rough Grade	--	1 day	Apr 15, 2022	Apr 15, 2022	Precision Snow and Ice Mana	<a href="#">24</a>
26	● Install Downspouts	--	1 day	Apr 15, 2022	Apr 15, 2022	Precision Snow and Ice Mana	<a href="#">24</a>
27	● Install Electric Underground	--	1 day	Apr 15, 2022	Apr 15, 2022	Precision Snow and Ice Mana	<a href="#">24</a>
28	● Install Yard Drain	--	1 day	Apr 15, 2022	Apr 15, 2022	Precision Snow and Ice Mana	<a href="#">24</a>
29	● Deliver Dumpster	--	1 day	Apr 18, 2022	Apr 18, 2022	North American Waste Solutic	<a href="#">25</a>
30	● Deliver Lumber	--	1 day	Apr 18, 2022	Apr 18, 2022	The Carter-Jones Lumber Cor	<a href="#">25</a>

31	● Deliver Steel	--	1 day	Apr 18, 2022	Apr 18, 2022	Mason Structural Steel, Inc	<a href="#">25</a>
32	● Deliver Trusses	--	1 day	Apr 18, 2022	Apr 18, 2022	The Carter-Jones Lumber Co	<a href="#">25</a>
33	● Frame House	--	4 days	Apr 19, 2022	Apr 22, 2022	Country View Woodworking	<a href="#">30</a> <a href="#">31</a>
34	● Deliver Windows/Doors	--	1 day	Apr 22, 2022	Apr 22, 2022	The Carter-Jones Lumber Co	<a href="#">33</a>
35	● Deliver Propane	--	1 day	Apr 25, 2022	Apr 25, 2022	--	<a href="#">33</a>
36	● Deliver Shingles	--	1 day	Apr 25, 2022	Apr 25, 2022	Homestead Exterior Solutions	<a href="#">33</a>
37	● Gas Application	--	1 day	Apr 25, 2022	Apr 25, 2022	Francis Amato	<a href="#">33</a>
38	● Install Shingles	--	1 day	Apr 26, 2022	Apr 26, 2022	Homestead Exterior Solutions	<a href="#">36</a>
39	● Plumbing Rough/Gas	--	3 days	Apr 26, 2022	Apr 28, 2022	Edgell Plumbing	<a href="#">38</a>
40	● Tub Prep	--	1 day	Apr 26, 2022	Apr 26, 2022	All Construction Services LLC	<a href="#">33</a>
41	● Deliver Flatwork Gravel	--	1 day	Apr 29, 2022	Apr 29, 2022	Redland Quarries NY Inc DBA	<a href="#">39</a>
42	● Inspect Plumbing	--	1 day	Apr 29, 2022	Apr 29, 2022	--	<a href="#">39</a>
43	● Prep Flatwork	--	1 day	May 2, 2022	May 2, 2022	Precision Snow and Ice Mana	<a href="#">39</a>
44	● Deliver Concrete for Flatwork	--	1 day	May 3, 2022	May 3, 2022	--	<a href="#">43</a>
45	● Pour Flatwork	--	1 day	May 3, 2022	May 3, 2022	Precision Snow and Ice Mana	<a href="#">44</a>
46	● Install Furnace/Ductwork	--	1 day	May 4, 2022	May 4, 2022	Viccarone Heating	<a href="#">47</a>
47	● Rough HVAC	--	1 day	May 4, 2022	May 4, 2022	Viccarone Heating	<a href="#">45</a>
48	● Electrical Rough	--	3 days	May 5, 2022	May 9, 2022	RO-Check Electric, Inc	<a href="#">47</a>

49	● Inspect HVAC	--	1 day	May 5, 2022	May 5, 2022	--	<a href="#">47</a>
50	● Frame Punch	--	1 day	May 9, 2022	May 9, 2022	Country View Woodworking	<a href="#">48</a>
51	● Install Meter Set	--	1 day	May 9, 2022	May 9, 2022	RO-Check Electric, Inc	<a href="#">48</a>
52	● Deliver Siding	--	1 day	May 10, 2022	May 10, 2022	Homestead Exterior Solutions	<a href="#">50</a>
53	● Framing Inspection	--	1 day	May 10, 2022	May 10, 2022	--	<a href="#">50</a>
54	● Gas Tap	--	1 day	May 10, 2022	May 10, 2022	--	<a href="#">37</a>
55	● Inspect Rough Electric	--	1 day	May 10, 2022	May 10, 2022	--	<a href="#">48</a>
56	● Install Siding	--	2 days	May 11, 2022	May 12, 2022	Homestead Exterior Solutions	<a href="#">52</a>
57	● Install Gutters	--	1 day	May 13, 2022	May 13, 2022	All Construction Services LLC	<a href="#">56</a>
58	● Insulation	--	1 day	May 13, 2022	May 13, 2022	All Construction Services LLC	<a href="#">56</a>
59	● HERS Inspection #1	--	1 day	May 16, 2022	May 16, 2022	R Family Company LLC	<a href="#">58</a>
60	● Insulation Inspection	--	1 day	May 16, 2022	May 16, 2022	City of Vermilion	<a href="#">58</a>
61	● Install Electric Meter	--	1 day	May 17, 2022	May 17, 2022	--	<a href="#">58</a>
62	● Install Gas Meter	--	1 day	May 17, 2022	May 17, 2022	--	<a href="#">54</a>
63	● Order Appliances	--	1 day	May 17, 2022	May 17, 2022	Francis Amato	<a href="#">64</a>
64	● Stock Drywall	--	1 day	May 17, 2022	May 17, 2022	R.A.M Drywall Co	<a href="#">60</a>
65	● Hang Drywall	--	2 days	May 18, 2022	May 19, 2022	R.A.M Drywall Co	<a href="#">64</a>
66	● Attic Insulation	--	1 day	May 20, 2022	May 20, 2022	All Construction Services LLC	<a href="#">65</a>

67	● Drywall Inspection	--	1 day	May 20, 2022	May 20, 2022	--	<a href="#">65</a>
68	● Finish Drywall	--	5 days	May 23, 2022	May 27, 2022	R.A.M Drywall Co	<a href="#">67</a>
69	● Install Garage Door/Opener	--	1 day	May 23, 2022	May 23, 2022	Homenik Door Co, Inc.	<a href="#">65</a>
70	● Cut Driveway/Walks	--	1 day	May 24, 2022	May 24, 2022	Precision Snow and Ice Mana	<a href="#">69</a>
71	● Deliver Drive Stone	--	1 day	May 24, 2022	May 24, 2022	Redland Quarries NY Inc DBA	<a href="#">69</a>
72	● Form Driveway	--	1 day	May 25, 2022	May 25, 2022	Precision Snow and Ice Mana	<a href="#">71</a>
73	● Deliver Exterior Concrete	--	1 day	May 26, 2022	May 26, 2022	--	<a href="#">72</a>
74	● Pour Driveway	--	1 day	May 26, 2022	May 26, 2022	Precision Snow and Ice Mana	<a href="#">73</a>
75	● Deliver Cabinets	--	1 day	May 30, 2022	May 30, 2022	Rite Rug Co	<a href="#">68</a>
76	● Deliver Trim/Hardware	--	1 day	May 30, 2022	May 30, 2022	The Carter-Jones Lumber Cor	<a href="#">68</a>
77	● Final Grade	--	1 day	May 30, 2022	May 30, 2022	Precision Snow and Ice Mana	<a href="#">74</a>
78	● Install Water Meter	--	1 day	May 30, 2022	May 30, 2022	--	<a href="#">67</a>
79	● As-Built Topo	--	1 day	May 31, 2022	May 31, 2022	Atwell LLC	<a href="#">77</a>
80	● Prime Walls	--	1 day	May 31, 2022	May 31, 2022	Lorain Interiors	<a href="#">68</a>
81	● Install Mailbox	--	1 day	Jun 1, 2022	Jun 1, 2022	--	<a href="#">79</a>
82	● Install Trim	--	1 day	Jun 1, 2022	Jun 1, 2022	Elite Trim Carpentry LLC	<a href="#">80</a>
83	● Stabilization	--	1 day	Jun 1, 2022	Jun 1, 2022	Ross Maintenance LLC	<a href="#">79</a>
84	● Measure Tops	--	1 day	Jun 2, 2022	Jun 2, 2022	Bradley Stone Industries, Ltd	<a href="#">82</a>

85	● Paint Walls/Trim	--	5 days	Jun 2, 2022	Jun 8, 2022	Lorain Interiors	<a href="#">82</a>
86	● Point up	--	1 day	Jun 2, 2022	Jun 2, 2022	R.A.M Drywall Co	<a href="#">82</a>
87	● Exterior Paint	--	1 day	Jun 8, 2022	Jun 8, 2022	Lorain Interiors	<a href="#">85</a>
88	● Hard Surface Flooring	--	3 days	Jun 9, 2022	Jun 13, 2022	WCCV Floor Coverings LLC	<a href="#">85</a>
89	● Finish HVAC	--	1 day	Jun 14, 2022	Jun 14, 2022	Viccarone Heating	<a href="#">88</a>
90	● Basement Insulation	--	1 day	Jun 15, 2022	Jun 15, 2022	All Construction Services LLC	<a href="#">89</a>
91	● Final HVAC Inspection	--	1 day	Jun 15, 2022	Jun 15, 2022	--	<a href="#">89</a>
92	● Set AC	--	1 day	Jun 15, 2022	Jun 15, 2022	Viccarone Heating	<a href="#">89</a>
93	● Trim Punch	--	1 day	Jun 15, 2022	Jun 15, 2022	Elite Trim Carpentry LLC	<a href="#">89</a>
94	● Deliver Appliances - DW	--	1 day	Jun 16, 2022	Jun 16, 2022	GE Electric Co - GE Appliances	<a href="#">96</a>
95	● Deliver Electrical Fixtures	--	1 day	Jun 16, 2022	Jun 16, 2022	WESCO Distribution	<a href="#">93</a>
96	● Install Tops	--	1 day	Jun 16, 2022	Jun 16, 2022	Bradley Stone Industries, Ltd	<a href="#">85</a>
97	● Deliver/Install Appliances	--	1 day	Jun 17, 2022	Jun 17, 2022	GE Electric Co - GE Appliances	<a href="#">96</a>
98	● Finish Plumbing	--	1 day	Jun 20, 2022	Jun 20, 2022	Edgell Plumbing	<a href="#">96</a>
99	● Final Plumbing Inspection	--	1 day	Jun 21, 2022	Jun 21, 2022	--	<a href="#">98</a>
100	● Finish Electrical	--	1 day	Jun 21, 2022	Jun 21, 2022	RO-Check Electric, Inc	<a href="#">98</a>
101	● Deliver Appliances - Micro/Range	--	1 day	Jun 22, 2022	Jun 22, 2022	GE Electric Co - GE Appliances	<a href="#">100</a>
102	● Final Electrical Inspection	--	1 day	Jun 22, 2022	Jun 22, 2022	--	<a href="#">100</a>

103	● Install Bath Hardware	--	1 day	Jun 22, 2022	Jun 22, 2022	All Construction Services LLC	<a href="#">100</a>
104	● Install Garage Door Openers/Accessories	--	1 day	Jun 22, 2022	Jun 22, 2022	Homenik Door Co, Inc.	<a href="#">100</a>
105	● Install Mirrors	--	1 day	Jun 22, 2022	Jun 22, 2022	All Construction Services LLC	<a href="#">100</a>
106	● Install Shelving	--	1 day	Jun 22, 2022	Jun 22, 2022	All Construction Services LLC	<a href="#">100</a>
107	● Install Carpet	--	1 day	Jun 23, 2022	Jun 23, 2022	WCCV Floor Coverings LLC	<a href="#">100</a>
108	● Cleaning	--	1 day	Jun 24, 2022	Jun 24, 2022	Addison Cleaning Company L	<a href="#">107</a>
109	● HERS Inspection #2	--	1 day	Jun 27, 2022	Jun 27, 2022	R Family Company LLC	<a href="#">108</a>
110	● Punchout	--	3 days	Jun 27, 2022	Jun 29, 2022	<b>Francis Amato</b>	<a href="#">108</a>
111	● Remove Dumpster	--	1 day	Jun 27, 2022	Jun 27, 2022	North American Waste Solutic	<a href="#">108</a>
112	● Remove Porta John	--	1 day	Jun 27, 2022	Jun 27, 2022	P and J Sanitation, Inc.	<a href="#">108</a>
113	● Remove Propane	--	1 day	Jun 27, 2022	Jun 27, 2022	--	<a href="#">108</a>
114	● Occupancy Inspection	--	1 day	Jun 30, 2022	Jun 30, 2022	--	<a href="#">110</a>
115	● Paint Touch-up	--	1 day	Jun 30, 2022	Jun 30, 2022	Phoenix Painting, LLC	<a href="#">110</a>
116	● Touch Up Clean	--	1 day	Jul 4, 2022	Jul 4, 2022	Addison Cleaning Company L	<a href="#">115</a>
117	● Certificate of Occupancy	--	1 day	Jul 7, 2022	Jul 7, 2022	--	<a href="#">114</a>
118	● Delivery	--	1 day	Jul 8, 2022	Jul 8, 2022	<b>Francis Amato</b>	<a href="#">117</a>

## **EXHIBIT F**

### **ACCESS AGREEMENT**

This Access Agreement (the “Agreement”) is made by and between the CITY OF CLEVELAND HEIGHTS, OHIO, a municipal corporation and political subdivision duly organized and existing under the laws of the State of Ohio (the “City”) and AMATO HOMES I LLC, a Colorado limited liability company (the “Developer”) effective as of the last date set forth below their respective signatures hereto (the “Effective Date”) in connection with the possible sale to and development of up to 18 lots by Developer of single-family owner-occupied dwelling units of City-owned/controlled real property located along Desota Avenue in the City (the “Project Site”). As a condition to City’s agreement to allow Developer access to the Project Site which the City hereby grants to the Developer and its Representatives, Developer agrees to be bound by the terms set forth in this Agreement (the “Agreement”).

1. In connection with any entry by Developer or any of its officers, directors, employees, agents, advisors or representatives (collectively “Representatives”) onto the Project Site, Developer shall give City reasonable advance notice of such entry, which shall not be less than twenty-four (24) hours, and shall conduct such entry and any inspections in connection therewith so as to reasonably minimize interference with (i) the business of the City and (ii) neighboring properties, and otherwise in a manner reasonably acceptable to City. Notwithstanding the foregoing, Developer shall not perform any physically invasive testing of the Project Site, including, without limitation, performing any environmental testing, drilling or sampling, without first obtaining City’s prior written consent thereto. City may have a representative present to observe all testing, work, inspections or entries onto the Project Site (such testing and other work, inspections and entries onto the Project Site are referred to herein as the “Inspection Work”). The Inspection Work shall be at Developer’s sole cost and expense and Developer agrees to keep the Project Site free and clear of any liens that may arise as a result thereof. All activities undertaken in connection with the Inspection Work shall fully comply with applicable law and regulations, including, without limitation, laws and regulations relating to worker safety, proper disposal of any disturbed or discarded materials, and noise and operating hour restrictions. Developer is solely responsible for the off-site disposal of any samples taken. Developer shall repair promptly any physical damage caused by the Inspection Work, and shall restore the Project Site to its condition immediately prior to entry by Developer on the Project Site. The Developer shall provide copies to the City of any test results and reports relating to the Inspection Work promptly after completion of such work on the Project Site. The Developer shall maintain parking and minimize traffic issues during all testing and inspection activities on the Project Site.
2. Developer shall maintain, and shall ensure that its contractors maintain, public liability and property damage insurance reasonably satisfactory to the City insuring Developer and its Representatives against any liability arising out of any entry or

inspections of the Project Site pursuant to the provisions hereof. Such insurance maintained by Developer (and Developer's contractors) shall be in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) combined single limit for injury to or death of one or more persons in an occurrence, and for damage to tangible property (including loss of use) in an occurrence. The policies maintained by Developer and its contractors shall insure the contractual liability of Developer covering the indemnities herein and shall (i) name the City (and its successors and assigns) as additional insureds, (ii) contain a cross-liability provision, and (iii) contain a provision that the insurance provided by Developer hereunder shall be primary and noncontributing with any other insurance available to such City. Developer shall provide City with evidence of such insurance coverage for City's review and approval prior to any entry or inspection of the Project Site. Developer shall indemnify and hold City and its respective affiliates, partners, trustees, shareholders, members, controlling persons, directors, officers, attorneys, employees and agents of each of them, and their respective heirs, successors, personal representatives and assigns, harmless from and against any and all suits, actions, proceedings, investigations, demands, claims, liabilities, fines, penalties, liens, judgments, losses, injuries, damages, expenses or costs whatsoever, including, without limitation, attorneys' and expert' fees and costs, costs of investigation and remediation costs arising out of or relating to any entry on the Project Site by Developer or any of its Representatives and/or the Inspection Work, except to the extent arising out of an existing condition of or on the Project Site or caused by the City or any person or party acting at the request, or on behalf, of the City. Notwithstanding any provision in this agreement to the contrary, except as may be required by law, neither Developer nor any of its Representatives shall contact any governmental official or representative regarding any hazardous or toxic materials on or the environmental condition of the Project Site, without City's prior written consent thereto, which consent may be withheld in City's sole discretion.

3. Notwithstanding anything to the contrary contained in this Agreement, City shall have the right to terminate Developer's access to the Project Site at any time upon the termination of the MOU between the parties regarding the Project Site.

IN WITNESS WHEREOF, the parties have hereunto set their hands.

CITY OF CLEVELAND HEIGHTS, OHIO      AMATO HOMES I LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_, 2021

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_, 2021

The legal form and correctness of this  
instrument is approved:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_, 2021 \_\_\_\_\_

## **EXHIBIT G**

### **PLAN FOR COMMUNICATION AND COORDINATION BETWEEN DEVELOPER AND THE CITY**

The plan for communication and coordination between Developer and the City during the pre-construction planning period and the construction period for the Project shall be as follows:

#### **I. Pre-Construction Planning Period:**

All press releases, briefings, council updates, public briefings, or information sessions shall be coordinated between the two parties and are subject to the approval of the City..

Community Meetings intended to update the community, answer questions and receive input from residents on the project will be held periodically throughout this period. Community engagement is a key element for a successful development project and input from citizens will be a vital ingredient in the final development agreement for this project. Anyone interested in this important project is encouraged to attend these community meetings.

A meeting representing the Closing shall be held at such time as deemed acceptable so as to enable Developer to commence all construction activities.

At least one (1) pre-construction meeting will be held between the parties to this agreement, general contractor and subcontractor and all other parties as determined by the City. The purpose of this meeting is to exchange contact information and discuss all pertinent construction related issues in prepare for commencement of the building of the project improvements. A complaint resolution process shall also be negotiated and agreed to by the parties at this meeting.

#### **II. Construction Period:**

All press releases, briefings, council updates, public briefings, or information sessions shall be coordinated between the two parties and are subject to the approval of the City.

A Ground-Breaking Ceremony shall be held at the project site prior to commencement of construction. The City shall issue invitations to this event and coordinate all media coverage as deemed necessary.

A schedule for periodic Construction Progress meetings shall be agreed to at the pre-construction meeting for the project. Notes will be taken at these meetings and distributed to all parties within a reasonable time after the progress meeting is held.

**THE CITY SHALL HAVE THE RIGHT TO INSPECT THE PROJECT AT ALL  
REASONABLE TIMES DURING CONSTRUCTION, AFTER WRITTEN NOTICE  
TO DEVELOPER, AND FOLLOWING ALL OTHER REQUIREMENTS STATED IN  
THIS AGREEMENT. THE FOREGOING SHALL NOT BE DEEMED AS LIMITING  
IN ANY WAY THE RIGHTS OF THE CITY'S BUILDING INSPECTORS TO**

**CONDUCT INSPECTIONS FROM TIME TO TIME AND WITHOUT PRIOR NOTICE, IN ACCORDANCE WITH NORMAL CITY INSPECTION PROCEDURES.**

**EXHIBIT H**

**DESCRIPTION OF STANDARD FEATURES IN  
EACH HOUSE CONSTRUCTION**

**[SEE ATTACHED]**



## Modern Series – Standard Features

### ***Foundation***

- \* Cast in Place Concrete Foundation (per plan)
- \* GMX Ultrashield waterproofing w/Thermal Drain Board (R-3)

### ***Electrical***

- \* 200-amp main service
- \* 2 cable outlets
- \* 2 GFI exterior outlets
- \* Smoke detectors on all floors, hard wired with battery backup
- \* Switched light in basement/attic

### ***Insulation***

- \* R-13 walls, R- vaulted ceilings, R-49 ceilings
- \* All windows, doors and open corners sealed with insulation and foam
- \* Air Circulation maintained in insulated areas directly under roof

### ***Plumbing & Baths***

- \* Exhaust fans in all baths
- \* Moen Genta Faucets nickel finish
- \* Kohler or equal four-piece tub/shower units
- \* Arbor High Arch Kitchen Faucet nickel finish
- \* Moen "Scaldguard Protection" in all showers
- \* 50-gallon high-efficiency electric water heater
- \* Kohler or equal sinks, china
- \* Twin-bowl stainless steel kitchen sink
- \* Shut-off valves at accessible locations
- \* Moisture resistant board behind shower
- \* Mirrors above all bath vanities
- \* Shower rods, towel bars, and paper holders in all baths

### ***Cabinetry***

- \* Tru cabinets and vanities with soft close drawers, and nickel door hardware
- \* Granite countertops with back-splashes

### ***Heating & Cooling***

- \* 92% gas furnace, Goodman
- \* 13 seer Air conditioning unit, Goodman

In our continuing effort to meet the challenges of product improvement, we reserve the right to modify or change plans, specifications and features.  
Updated 11-30-2021.

### ***Trim & Doors***

- \* 2 1/4" case and 3 1/4" base MDF trim
- \* 2 Panel Squaretop Doors, painted white
- \* Ventilated wire closet shelving
- \* Kwickset locks and deadbolts, nickel finish

### ***GE Appliances- Stainless Steel***

- \* Range (Electric)
- \* Microwave
- \* Dishwasher
- \* Disposal (Badger or equivalent)

### ***Lighting***

- \* Kichler Lighting package nickel finish
- \* Ceiling fan in Family Room/Owners Suite
- \* 2 Exterior Coach Lights at garage

### ***Flooring***

- \* Armstrong LVP selected areas on 1<sup>st</sup> floor, laundry,baths
- \* Dwellings 25oz carpet w/8# pad in bedrooms, closets, hallways, 2<sup>nd</sup> floor stairway

### ***Exterior & Siding***

- \* Royal 4.5 vinyl siding (.42 thickness)
- \* Harvey vinyl insulated windows w 1/2 screens
- \* Certainteed Limited Lifetime Architectural shingles
- \* Schuster Fiberglass exterior doors
- \* Schuster Steel garage man door
- \* Schuster Rear glass man door (per plan)
- \* Insulated Wayne Dalton 9100 garage doors
- \* Liftmaster openers/remotes
- \* Steps to grade (as required by code)

### ***General Features***

- \* Varied ceiling heights
- \* One-year HBA home warranty
- \* Generous closet & storage space

### ***Construction***

- \* On-site stick-built construction
- \* HERS Testing (energy efficiency)
- \* Pre-engineered roof trusses
- \* **IN CASE OF A CONFLICT, THIS DOCUMENT WILL SUPERCEDE THE ARCHITECTURAL BLUEPRINTS.**



EQUAL HOUSING  
OPPORTUNITY



## Traditions Series – Standard Features

### ***Foundation***

- \* Cast in Place Concrete Foundation (per plan)
- \* GMX Ultrashield waterproofing w/Thermal Drain Board (R-3)

### ***Electrical***

- \* 200-amp main service
- \* 2 cable outlets
- \* 2 GFI exterior outlets
- \* Smoke detectors on all floors, hard wired with battery backup
- \* Switched light in basement/attic

### ***Insulation***

- \* R-13 walls, R- vaulted ceilings, R-49 ceilings
- \* All windows, doors and open corners sealed with insulation and foam
- \* Air Circulation maintained in insulated areas directly under roof

### ***Plumbing & Baths***

- \* Exhaust fans in all baths
- \* Moen Chateau chrome finish
- \* Kohler or equal four-piece tub/shower units
- \* Moen "Scaldguard Protection" in all showers
- \* 50-gallon high-efficiency electric water heater
- \* Kohler or equal sinks, china
- \* Twin-bowl stainless steel kitchen sink
- \* Shut-off valves at accessible locations
- \* Moisture resistant board behind shower
- \* Mirrors above all bath vanities
- \* Shower rods, towel bars, and paper holders in all baths – Chrome

### ***Cabinetry***

- \* Tru cabinets and vanities with soft close drawers and nickel door hardware
- \* Granite countertops with back-splashes

### ***Heating & Cooling***

- \* 92% gas furnace, Goodman
- \* 13 seer Air conditioning unit, Goodman

In our continuing effort to meet the challenges of product improvement, we reserve the right to modify or change plans, specifications and features. Updated 11-30-2021.

### ***Trim & Doors***

- \* 2 1/4" case and 3 1/4" base MDF trim
- \* 2 Panel Squaretop Doors, painted white
- \* Ventilated wire closet shelving
- \* Kwickset locks and deadbolts, nickel finish

### ***GE Appliances- Stainless Steel***

- \* Range (Electric)
- \* Microwave
- \* Dishwasher
- \* Disposal (Badger or equivalent)

### ***Lighting***

- \* Kichler Lighting package nickel finish
- \* Ceiling fan in Family Room/Owners Suite
- \* 2 Exterior Coach Lights at garage

### ***Flooring***

- \* Armstrong LVP Selected areas on 1<sup>st</sup> floor, laundry, baths
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