

EXHIBIT “A”

SUBDIVISION AGREEMENT

THIS AGREEMENT (this “Agreement”) made and entered into at Cleveland, Ohio this ____ day of June, 2024 by and between the **City of Brecksville**, an Ohio Municipal Corporation, hereinafter referred to as “CITY;” and **DiGeronimo Development LLC**, an Ohio limited liability company, hereinafter referred to as “DEVELOPER.”

WITNESSETH

WHEREAS, the Plat and Improvement Plans of CANVAS AT VA Phase II hereinafter referred to as the “Subdivision” have been previously presented to the Council of CITY for approval; and

WHEREAS, DEVELOPER will be installing certain improvements in accordance with Chapters 1119 and 1123 of the Codified Ordinances of the CITY; and

WHEREAS, Chapter 1119 of the Codified Ordinances of the CITY requires the completion of all required improvements within a subdivision, with a guarantee of completion of all improvements prior to the recording of a plat for record purposes; and

WHEREAS, DEVELOPER desires to install these required improvements, to deposit a Financial Assurance, as defined below, and has presented its Improvement Plan to CITY, a copy of said plan is attached hereto and marked Exhibit “A” (the “Improvement Plan”); and

WHEREAS, the City has established and the DEVELOPER will cause the funding in Private Purpose Trust Fund, being Fund No. 781, in the amount of Two Hundred Twenty Four

Thousand Four Hundred and Fifty 00/100 Dollars (\$224,450.00) for the improvements provided for in this Subdivision Agreement and the Improvement Plan.

NOW, THEREFORE, the CITY and DEVELOPER hereby mutually promise and agree as follows:

1. DEVELOPER promises and agrees that on or before the expiration of twenty four (24) months from the date hereof, it will construct, install and maintain, within the areas shown and described on the Improvement Plan, at its sole expense, and without any cost, expense or liability whatsoever to the CITY, the storm sewer lines, sanitary sewer lines, storm water storage and detention facilities, water mains and appurtenances thereto, service connections, the grading and construction of deep strength asphalt pavement with reinforced concrete curbs and appurtenances incident to the street(s) as shown in the Improvement Plans, grading and construction of sidewalks, topcoat of pavement, clearing, grading and seeding of land, installation of erosion control measures, perimeter drainage control and trench settlement and other settlement abatement and installation of lighting on all common property and all sublots. All of the improvements shall be installed in accordance with the plans and specifications approved by the Engineer of the CITY as contained in the Improvement Plan and in accordance with the ordinances, regulations and specifications of the CITY, and in the case of water mains by the Utilities Department of the City of Cleveland and in the case of sanitary and storm sewer lines by the Cuyahoga County Sanitary Engineer.

2. Developer agrees to install Subdivision landscaping as approved by The Planning Commission of the CITY. Such improvements shall be part of the required Subdivision improvements included in both Paragraph 4 below and in Paragraph 1 of the Escrow Agreement

attached hereto as Exhibit “B” and incorporated herein by this reference (the “Escrow Agreement”).

3. DEVELOPER further agrees that the Subdivision will be accepted by the CITY upon its completion and approval by the Engineer of the CITY in accordance with the ordinances and regulations of the CITY, to maintain said improvements in good repair and free from defects for a period of two (2) years following the acceptance of the dedication thereof to public use by the CITY, regardless of whether such defects arise from defects in workmanship or defective materials.

4. DEVELOPER will deposit funds in the amount of Two Hundred Twenty-Four Thousand Four Hundred and Fifty 00/100 Dollars (\$224,450.00) to be placed in Private Purpose Trust Fund No. 781 (the “Trust Fund”) to be used solely to finance and pay the total cost of all the required Subdivision improvements as provided for in this Agreement. CITY and DEVELOPER agree that disbursement of the aforesaid funds shall be made only upon certification by the Project Engineer, approved by the DEVELOPER and the Engineer of the CITY in accordance with the terms of an Escrow Agreement, attached hereto as Exhibit B.

5. Intentionally Omitted.

6. DEVELOPER further agrees that as a condition of and prior to the acceptance by the CITY of the dedication to the public use of said streets and roads contained in the Subdivision, it will furnish to the CITY a surety bond or an irrevocable standby bank letter of credit in the penal sum or amount of not less than Three Hundred Fifty Five Thousand Two Hundred and Ninety One 00/100 Dollars (\$355,291.00) (the “Financial Assurance”), guaranteeing the quality of materials and the performance of repairs of all improvements as contained within said Subdivision which

result from defects in materials and/or workmanship, or otherwise for a period of two (2) years following the acceptance of the dedication of streets and roads in said Subdivision to the public use by the CITY as provided herein.

In addition, at the same time as DEVELOPER furnishes to the CITY the Finance Assurance as required above, the CITY acknowledges that **eighty-six thousand two hundred seventy-five Dollars (\$86,275.00)** of the deposit in the Private Purpose Trust Fund is to guarantee the installation of sidewalks on all sublots (the "Sidewalk Deposit") to guarantee the installation of sidewalks as shown on an exhibit submitted to the City Engineer simultaneously with the approval of this Agreement. If such sidewalks are not installed pursuant to this Agreement, subject to applicable notice and cure periods, the CITY shall use the Sidewalk Deposit at eight dollars and fifty cents (\$8.50) per square foot to so install said sidewalks. If said sidewalks are installed by the DEVELOPER, the CITY shall refund to DEVELOPER the Sidewalk Deposit at eight dollars and fifty cents (\$8.50) per square foot upon completion of each section of sidewalk and the approval of the Chief Building Official, which approval will not be unreasonably withheld, conditioned or delayed and shall be in accordance with the CITY ordinances and regulations. In addition, at the same time as the DEVELOPER furnishes the Financial Assurance and Sidewalk Deposit as required above, the CITY acknowledges that Twenty-Five Thousand Dollars (\$25,000.00) of the deposit in the Private Purpose Trust Fund is to guarantee the final cleaning of the Storm Water Management System Facilities (the "Cleaning Deposit") in accordance with the Improvement Plan. Said facility will be used by the Developer as a sediment basin throughout the construction and will require cleaning/dredging prior to being turned over to the Homeowner's Association. At the time the Financial Assurance, Sidewalk Deposit and the Cleaning Deposit are posted, any amounts remaining in the Trust Fund will be returned to DEVELOPER.

7. DEVELOPER further agrees that during the aforesaid two (2) year period, it shall at its sole expense, repair all faults and defects of every kind and nature, whether arising out of defects in workmanship or defective materials. The parties agree that DEVELOPER is not responsible for ordinary maintenance of the Subdivision improvements or for repairs which are not the result of defective workmanship and/or equipment by DEVELOPER or anyone performing work on DEVELOPER'S behalf.

8. In addition to the Financial Assurance required in Paragraph 6 above, at the time DEVELOPER desires to obtain approval and acceptance by the CITY of the aforesaid improvements, DEVELOPER agrees that it will, as a condition precedent to the said acceptance by the CITY and disbursement of the Trust Fund Deposit from the Trust Fund to DEVELOPER, provide the CITY with the following documents in accordance with the standard procedures of the following entities: certificates or other reasonably acceptable communications from the Utilities Department of the City of Cleveland in the case of water mains except where the withholding of approval is due to the non-performance of acts required to be performed by CITY; the Cuyahoga County Sanitary Engineer in the case of sanitary and storm sewer lines; and the Engineer of the CITY, respectively, stating that said water mains, storm sewer lines, sanitary sewer lines, streets, street connections, all appurtenances thereto and all other improvements as set forth in Paragraph 1. above have been properly installed in accordance with the Improvement Plan and the ordinances of the CITY, and that the construction and installation thereof have been duly completed, inspected and approved by each of the hereinbefore mentioned respective entities.

9. DEVELOPER shall construct and complete all sidewalks in accordance with the terms of this Agreement and Section 1119.09(d) of the CITY's codified ordinances. DEVELOPER shall

construct remaining sidewalks within the Subdivision or on any street therein in a lesser period than otherwise required by this Agreement in order to assure safe pedestrian travel within the Subdivision when reasonably determined by the CITY that: A) the construction of homes within the Subdivision are completed earlier than two (2) years from the acceptance of the CITY, or B) eighty percent (80%) of the home construction within the Subdivision or on any street thereof is completed. Should the DEVELOPER fail to install the aforementioned sidewalks, subject to applicable notice and cure periods, the CITY will install the required sidewalk based upon a rate of eight dollars and fifty cents (\$8.50) per square foot.

10. DEVELOPER may complete the final cleaning/dredging of the Storm Water Management Facilities, if necessary, after eighty percent (80%) of the homes within the Subdivision are complete and their yards are established with grass and prior to turning the maintenance responsibility of the Storm Water Management Facilities to the Homeowners Association. Upon completion of this cleaning if deemed necessary by the CITY, all remaining funds in the Trust Fund shall promptly be returned to the DEVELOPER. If the DEVELOPER fails to complete such task, subject to applicable notice and cure periods, the CITY reserves the ability to utilize such funds to clean/dredge the storm water facility in accordance with the Improvement Plan or transfer such funds to the Homeowner's Association for their use in completing such task, if necessary.

11. DEVELOPER currently has a balance on deposit with the CITY'S Finance Director, that balance shall be the initial amount on deposit (the "Expense Fund") to defray the cost of legal, engineering and inspection fees, costs and expenses incurred by the CITY, and the Finance Director is hereby authorized and directed to disburse said sum upon proper billing to the CITY for said services. DEVELOPER acknowledges that the Expense Fund is based upon an estimate and that

in the event said sum is insufficient to fully pay all of the aforementioned expenses of the CITY, DEVELOPER shall deposit such additional sums as may be reasonably required upon the request of the Finance Director of the CITY. Any unused portion of the Expense Fund shall be refunded to DEVELOPER upon providing the Financial Assurance.

12. DEVELOPER agrees that simultaneously with the execution of this Agreement, and before any work hereunder is commenced, it will submit evidence to the reasonable satisfaction of the Law Director of the CITY, that it, or its contractors, have obtained general liability and property damage insurance covering and insuring the CITY as its interests may appear against any liability whatsoever in the amount of Two Million Dollars (\$2,000,000) for injury or death to any one person, with a minimum aggregate limit of Two Million Dollars (\$2,000,000), and two million dollars (\$2,000,000) for property damage, which insurance shall be furnished and maintained at the expense of the DEVELOPER until all the work agreed to be done by the DEVELOPER has been fully completed and accepted. DEVELOPER may provide such insurance under a blanket type of insurance provided the CITY is properly named as an additional insured thereunder in accordance with the provisions of this Agreement. DEVELOPER shall be liable for any damages, whether direct or indirect, to any underground or aboveground utilities in the aforementioned Subdivision caused by DEVELOPER or its contractors, subcontractors, agents and/or employees; and further agrees to comply both singularly and on behalf of the CITY with the provisions contained in Section 153.64 of the Ohio Revised Code and any amendments made thereto to the extent said Section shall be applicable.

13. DEVELOPER agrees to comply with the State Law known as the Worker's Compensation Act, and any amendments made thereto, and to cause to be covered thereunder all

employees working for the DEVELOPER, or its agents, and the DEVELOPER agrees to defend, indemnify and hold harmless the CITY and its officers, agents and employees from all claims, demands, payments, loss and expenses, including reasonable attorney fees, suits, actions, recoveries and judgments of every kind and description, whether or not well founded in law, made, brought or recovered against it, arising from any cause whatever or for any reason whatever connected with the performance of this Agreement by DEVELOPER or its agents, contractors, subcontractors or employees, including any of the foregoing arising in consequence of insufficient protection or of the use of any patented invention by said DEVELOPER.

14. DEVELOPER agrees that the performance of this Agreement by it shall be solely at its expense and cost, and at no expense or cost, to, or liability or obligation of the CITY, except for reimbursement of funds as provided in this Agreement.

15. DEVELOPER agrees, if applicable hereunder, to deliver to the CITY a Title Insurance Policy in the fair market value as determined by the Mayor of the CITY, showing title to private property conveyed to the CITY by dedication, easement, if any, or otherwise to be vested in the CITY free and clear of all liens and encumbrances, except for taxes and assessments, which are a lien, but not yet due and payable.

16. This Agreement shall be binding upon any successors in interest, assignee, heir, executor, administrator or trustee of DEVELOPER, and DEVELOPER agrees that prior to any voluntary or involuntary assignment of this Agreement, to obtain a written statement forwarded to CITY acknowledging the obligation of any successor in interest to comply with the terms of this Agreement.

17. Prior to the issuance of any certificates of occupancy within the Subdivision, all street pavements, curbs, sanitary sewer systems, storm drainage systems, water mains, electric lines, gas lines, cable television and phone lines and required appurtenances shall be completed and approved by the City Engineer, provided that the Building Commissioner may issue permits for “model” homes or units upon his determination that improvements have been installed to the extent reasonably necessary to serve and permit occupancy of such home(s) or unit(s); and, except as otherwise provided for model home(s) and unit(s), prior to the issuance of any certificates of occupancy by the CITY, all improvements and utilities must be completed.

18. In the event DEVELOPER fails to perform any of its obligations under this Agreement, CITY shall provide DEVELOPER with reasonably acceptable communications and DEVELOPER shall have thirty (30) days thereafter to cure such failure prior to CITY having the right to disburse to itself any of the Trust Fund Deposit from the Trust Fund, provided, however, if DEVELOPER’S failure cannot reasonably be cured within said thirty (30) day period, DEVELOPER shall not have failed to perform hereunder so long as DEVELOPER begins the cure within said thirty (30) day period and diligently pursues the cure to completion, except that in an emergency situation as reasonably determined by the CITY, the CITY may proceed to cure and disburse to itself funds necessary to so cure.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures upon this Agreement as duly authorized agents, warranting that they are empowered to bind their respective party, on the date first written above.

[Execution Page Follows]

WITNESSES:

**CITY OF BRECKSVILLE, OHIO
(AS TO "CITY")**

Mayor Daryl J. Kingston

Laura Starosta, Finance Director

Approved as to Form Only:
David J. Matty, Director of Law

WITNESSES:

**DIGERONIMO DEVELOPMENT LLC:
(AS TO "DEVELOPER")**

By: _____

Print Name: Kevin DiGeronimo

Title: Treasurer and Secretary

EXHIBIT "A"

THE IMPROVEMENT PLAN

“Exhibit B”

ESCROW AGREEMENT

THIS AGREEMENT, made and entered into at Cleveland, Ohio this ____ day of June, 2024, by and between the **City of Brecksville**, an Ohio Municipal Corporation, hereinafter referred to as “CITY;” and **DiGeronimo Development LLC**, an Ohio limited liability company, hereinafter referred to as “DEVELOPER.”

WITNESSETH

WHEREAS, DEVELOPER will cause the funding of sums into the Private Purpose Trust Fund being Fund No. 781, hereinafter referred to as “ACCOUNT,” in the amount of Two Hundred Twenty Four Thousand Four Hundred and Fifty 00/100 Dollars (\$224,450.00), whereby CITY has agreed to hold such funds as set forth in the Subdivision Agreement between CITY and DEVELOPER of even date herewith (the “Subdivision Agreement”) for the purpose of ensuring completion of the Subdivision improvements for the CANVAS AT VA Phase II (the “Subdivision”), including constructing and installing storm sewer lines, sanitary sewer lines, the construction and maintenance of storm water storage and detention facilities, water mains and appurtenances thereto, service connections, the grading and construction of sidewalks, topcoat of pavement with reinforced concrete curbs and appurtenances incident to the street(s) in the Subdivision, clearing, grading and seeding of land, installation of erosion control measures, perimeter drainage control and trench settlement and other settlement abatement and installation of lighting on all common property and all sublots, installation of subdivision, if required, and landscaping and guaranteeing the maintenance of the aforesaid improvements and completion thereof, in accordance with the Subdivision Agreement.

WHEREAS, it is the agreement of the CITY and the DEVELOPER that disbursement of said funds from the ACCOUNT shall be made only upon certification by the Project Engineer, approved by the Engineer of the CITY, as to the cost and reasonable value of the disbursement and progress of the aforesaid improvements to the date of each disbursement. However, in no event shall the Financial Assurance (as defined in the Subdivision Agreement), herein referred to as the "Account," have a balance less than **Fifty Thousand 00/100 Dollars (\$50,000.00)** plus the cost of unbuilt sidewalks and the storm pond dredge deposit.

NOW, THEREFORE, in consideration of the foregoing, the CITY and DEVELOPER agree as follows:

1. The disbursement of funds by CITY from the ACCOUNT with respect to the payment of any and all statements for labor and materials in connection with the aforesaid improvements of the Subdivision, and the improvement plans therefor, shall be made only upon receipt by the CITY of payment certificates from the Project Engineer, approved by DEVELOPER and the Engineer of CITY, Donald Bohning & Associates, or its successors in office, that said certificates reflect the reasonable cost and reasonable value of the completion of the development to the date of each disbursement. The Engineer of the CITY agrees to promptly review and approve or disapprove payment certificates within seven (7) days after the same have been submitted to him. Upon receipt of said payment certificate from the Engineer of the CITY, the CITY shall then make the appropriate disbursement of funds except that the CITY shall hold Five (5) Percent of such funds from each pay application as retainage until the development is completed other than sidewalks, which have their own deposit, and approved by the City Engineer and DEVELOPER has posted the Bonds. Provided, however, that in the event the DEVELOPER does not diligently pursue or does not complete the construction of the required improvements in accordance with the terms and

conditions of the Subdivision Agreement and the ordinances of the CITY, subject to applicable notice and cure periods, unless such time is extended by the CITY upon request of the DEVELOPER for good cause shown, the CITY, upon thirty (30) days written notice to the DEVELOPER, shall have the right to complete the installation of the required improvements, as shown on the approved plans and specifications. The cost to the CITY of installing such improvements shall be paid from the funds of the ACCOUNT to the CITY in the same manner as specified above without the necessity of approvals by the Project Engineer and DEVELOPER. All funds remaining, if any, after satisfaction of all obligations of DEVELOPER to the CITY with respect to the Subdivision shall be promptly returned to DEVELOPER.

2. It is further agreed between CITY and DEVELOPER that DEVELOPER hereby releases the CITY from any and all responsibility, claims or liability of any kind whatsoever which may arise out of the application of funds to CITY upon default of DEVELOPER, as provided herein, except for reimbursement of funds from the ACCOUNT as provided in this Agreement and the Subdivision Agreement. The DEVELOPER, however, shall remain liable for the full amount of the cost of the installation of the required improvements in excess of the funds in the ACCOUNT.

3. This Agreement shall be binding upon any successors in interest, assignee, heir, executor, administrator or trustee of DEVELOPER. Prior to any voluntary or involuntary assignment of this Agreement, DEVELOPER agrees, to obtain a written statement forwarded to CITY acknowledging the obligation of any successor in interest to comply with the terms of this Agreement.

[Execution Page Follows]

WITNESSES:

**CITY OF BRECKSVILLE, OHIO
(AS TO “CITY”)**

Mayor Daryl J. Kingston

Laura Starosta, Finance Director

Approved:
David J. Matty, Director of Law

WITNESSES:

**DIGERONIMO DEVELOPMENT LLC:
(AS TO “DEVELOPER”)**

By: _____

Print Name: Kevin DiGeronimo

Title: Treasurer and Secretary