

SUBDIVISION AGREEMENT
Highland Park Residential Subdivision

THIS AGREEMENT, made and entered into at Cleveland, Ohio this ____ day of _____, 2024, by and between the City of Brecksville, an Ohio Municipal Corporation, hereinafter referred to as “CITY;” and Harris Park Development, LLC, an Ohio Corporation, hereinafter referred to as “DEVELOPER.”

WITNESSETH

WHEREAS, The Plat and Improvement Plans of Highland Park Residential Subdivision , hereinafter referred to as “Highland Park”, 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 cash guarantee 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 has previously funded a Private Purpose Trust Fund being Fund No. 781, in the amount of Thirty-Five Thousand Dollars (\$35,000.00) 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 one (1) year 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, 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, clearing, grading and seeding of land, installation of erosion control measures, perimeter drainage control, trench settlement and other settlement abatement 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 and 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 the sanitary and storm sewer lines by the Cuyahoga County Department of Public Works (Sanitary Division).

2. DEVELOPER agrees to install Highland Park entrance signage and landscaping as approved by the Planning Commission of the CITY. Such improvements shall be part of the required Highland Park 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 if the CITY accepts the aforementioned improvements upon their completion and approval by the Engineer 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, or otherwise.

4. Developer deposited the sum of Thirty-Five Thousand Dollars (\$35,000.00) with the CITY for tree felling. On account of that work being completed, said sum shall 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 Highland Park 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.

5. At the time of filing the Plat, it is anticipated that certain work will be incomplete. An itemization of the expected remaining work is attached hereto as Exhibit "C" and incorporated herein by this reference, which is anticipated to cost approximately One Hundred Fifteen Thousand Dollars (\$115,000.00). Prior to filing the Plat, City and Developer will verify any incomplete items and adjust the additional deposit accordingly. Said amount will be deposited into the Trust Fund, which, together with the initial deposit already in the Trust Fund, will be used as a guarantee to complete work remaining to be done in Highland Park after the Plat is recorded. Upon CITY's acceptance of the Bond, as defined below, CITY agrees to accept dedication of the public right-of-way and other infrastructure improvements. The money held in the Trust Fund will be returned to Developer upon completion of the work.

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 Highland Park, 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 Four Hundred Sixty Nine Thousand Three Hundred Fifty Dollars (\$469,350.00) (the "Bond"), guaranteeing the quality of materials and the performance of repairs of all improvements are as contained within Highland Park, and further guaranteeing that the materials and the improvements are free from defects for a period of two (2) years following the acceptance of the dedication of streets and roads to the public use by the CITY. In addition, at the same time as DEVELOPER furnishes to the CITY the Bond as

required above, if there is not sufficient money in the Trust Fund to cover the cost of the sidewalks, Developer will deposit Seventy-One Thousand five Hundred Ninety-Five Dollars and Fifty Cents (\$71,595.50) cash with the CITY's Finance Director to guarantee the installation of sidewalks on all sublots (the "Sidewalk Deposit"). If such sidewalks are not installed pursuant to this Agreement, 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 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. In addition, if there is not sufficient money in the Trust Fund to cover cleaning the Storm Water Management System at the same time as the DEVELOPER furnishes the Bond and Sidewalk Deposit as required above, it will deposit Twenty-Five Thousand Dollars (\$25,000.00) cash with the CITY's Finance Director to guarantee the final cleaning of the Storm Water Management System Facilities (the "Cleaning Deposit"). Said facility will be used by the Developer as a sediment basin throughout the construction of Highland Park and subsequent home construction and will require cleaning/dredging prior to being turned over to the Home Owner's Association. At the time the Bond, 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 which arise out of the negligent or willful misconduct of Developer.

8. In addition to the Bond required in Paragraph 6 above, at the time DEVELOPER desires to obtain approval and acceptance by the CITY of the Highland Park improvements, DEVELOPER agrees that it will, as a condition precedent to the said acceptance by the CITY, provide the CITY with the following documents: Certificates or other writings from the Utilities Department of the City of Cleveland in the case of water mains except where the withholding of approval is due solely to the non-performance of

acts required to be performed by CITY; the Cuyahoga County Department of Public Works (Sanitary Division) in the case of sanitary and storm sewer lines; and the Engineer of the CITY, respectively, certifying 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 Highland Park or on any street therein in a lesser period than otherwise required by this Agreement in order to assure safe pedestrian travel within Highland Park when determined by the CITY that: A) the construction of homes within Phase Two are completed earlier than two (2) years, or B) eighty percent (80%) of the home construction within Highland Park or on any street thereof is completed. Should the DEVELOPER fail to install the aforementioned sidewalks, the CITY will install the required sidewalk based upon a rate of Eight Dollars and Fifty Cents (\$8.50) per square foot.

10. DEVELOPER will complete the final cleaning/dredging of the Storm Water Management Facilities after eighty percent (80%) of the homes within Highland Park 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 as deemed acceptable by the CITY all remaining funds shall be returned to the DEVELOPER. If the DEVELOPER fails to complete such task, the City reserves the ability to utilize such funds to clean/dredge the storm water facility or transfer such funds to the Homeowner's Association for their use in completing such task.

11. DEVELOPER, simultaneously with the execution of this Agreement, shall separately deposit with the Finance Director of the CITY the sum of Twelve Thousand Dollars (\$12,000.00) (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 required upon the request of the Finance Director of the CITY. Any unused portion of the Expense Fund shall be refunded to DEVELOPER.

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 public liability and property damage insurance covering and insuring the CITY as its interests may appear against liability 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, including the maintenance of the aforementioned improvements agreed by the DEVELOPER to be maintained. 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 Highland Park 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 under the control of 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 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.

15. DEVELOPER agrees, if applicable hereunder, to deliver to the CITY a Title Guarantee 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 material 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 building permits within the Highland Park, 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" home(s) or unit(s) upon his determination that improvements have been installed to the extent he deems 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.

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:

**(AS TO "DEVELOPER")
HARRIS PARK DEVELOPMENT, LLC:**

By: _____
Bojan R. Knez

ESCROW AGREEMENT

THIS AGREEMENT, made and entered into at Cleveland, Ohio this ____ day of _____, 2024, by and between the City of Brecksville, an Ohio Municipal Corporation, hereinafter referred to as "CITY;" and Harris Park Development, LLC, an Ohio Corporation, hereinafter referred to as "DEVELOPER."

WITNESSETH

WHEREAS, CITY has agreed to hold on deposit and in escrow on behalf of DEVELOPER a credit balance in the initial amount of Thirty Five Thousand Dollars (\$35,000.00) in Private Purpose Trust Fund No. 781, hereinafter referred to as "ACCOUNT,". At the filing of the Plat, it is anticipated that certain work will be incomplete, which is anticipated to cost approximately One Hundred Fifteen Thousand Dollars (\$115,000.00) as set forth in the Subdivision Agreement between CITY and DEVELOPER of even date herewith (the "Subdivision Agreement"). Prior to filing the Plat, CITY and DEVELOPER will verify the incomplete items and adjust the deposit amount accordingly. Said amount will be deposited into the Trust Fund for the purpose of ensuring completion of the Subdivision improvements for Highland Park Residential Subdivision ("Highland Park"), 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 deep strength asphalt pavement with reinforced concrete curbs and gutters and appurtenances incident to the street(s) in the Phase Two, clearing, grading and seeding of land, installation of erosion control measures, perimeter drainage control, trench settlement and other settlement abatement, installation of subdivision signage, 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 prior to the posting of the maintenance bond and sidewalk bond required by the Subdivision Agreement (collectively the "Bonds") and approval by the City Engineer, shall the balance of the ACCOUNT be less than Thirty-Five Thousand Dollars (\$35,000.00).

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 Thirty-Five Thousand Dollars (\$35,000.00) of such funds 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, unless such time is extended by the CITY upon request of the DEVELOPER for good cause shown, the CITY, upon ten (10) 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, except for claims or liability which arise out of the negligent or willful misconduct of Developer, as provided herein. 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.

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.

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

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Laura Starosta, Finance Director

Approved as to Form Only:
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HARRIS PARK DEVELOPMENT, LLC:**

By: _____
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