

**LAND ACQUISITION AGREEMENT/CONTRACT FOR THE SALE OF LAND FOR
PRIVATE DEVELOPMENT**

THIS AGREEMENT is dated the 3 day of February, 2017 by and between the **CITY OF TONAWANDA**, with offices at Tonawanda City Hall, 200 Niagara Street, NY 14150 ("**Seller**") and **DAVID HOME BUILDERS, INC.**, and/or assigns, P.O. Box 945, Hamburg, New York 14075 ("**Purchaser**").

1. **AGREEMENT.** Seller shall sell and Purchaser shall purchase the Property described below in accordance with the terms and conditions stated in this Agreement.

2. **PROPERTY.** The Property is comprised of approximately 14 acres; approximately as indicated in the attached survey map by GPI Land Surveyors dated January 16, 2017 and as further indicated as an approximately 14 acre portion of the premises shown on the Wm. Schutt & Associates, P.C. survey dated July 3, 2008; located in the City of Tonawanda, Erie County, New York (the "**Property**"). Both surveys of the Property are attached as Exhibit "A".

3. **PURCHASE PRICE AND PAYMENT INFORMATION.** The Purchase Price for the Property shall be \$160,000.00 ("**Purchase Price**"). A Deposit of \$5,000.00 shall be provided to the Seller by the Purchaser within seven (7) days of the full execution of this Agreement (the "**Deposit**"). The balance of Purchase Price shall be due upon closing per Paragraph 10 herein.

4. **ADJUSTMENTS AT CLOSING.** There shall be prorated and adjusted, as of 12:00 midnight prior to delivery of the deed to the Property, non-delinquent taxes, rents and assessments appearing on current tax bills.

5. **SEARCH AND SURVEY.** Seller shall at its sole cost and expense, within thirty (30) days of full execution of this Agreement, order an updated Title Search of the Property described in Paragraph 2 herein which shall be dated after the date of this Agreement. Purchaser is responsible for obtaining and paying for the survey prepared by GPI Land Surveyors.

6. **OBJECTION TO TITLE AND TITLE INSURANCE.** If Purchaser finds valid objections to Seller's title which shall make the title unmarketable, Purchaser shall:

- A. Accept the title as presented; or
- B. Advise the Seller, in writing, of the Purchaser's objection(s), allow the Seller, the later of ten (10) days after receiving written notice of the objection(s), or the closing date herein, in which to cure the objection(s), and then to accept the title once cured.

Provided, however, that if Seller cannot cure the objection, but a fee title insurance policy covering the objection can be obtained, then Purchaser shall accept

the same. Seller shall pay the cost of such fee title insurance at the full rate. If Seller cannot cure the defect nor obtain fee title insurance covering the objection, then this Agreement shall terminate, in which event the Deposit shall be immediately returned to the Purchaser.

7. **DEED.** At closing, Seller shall deliver to Purchaser a Bargain and Sale Deed with Covenant against grantor's acts, conveying good and marketable title in fee simple, free and clear of all liens and encumbrances, except for the permitted encumbrances set forth in Section 2, above, if any.

8. **POSSESSION.** It is understood that Purchaser will take title to and possession of the Property at Closing. Risk of loss shall remain with the Seller until title to the Property has been transferred to the Purchaser.

9. **COSTS.** Purchaser shall pay transfer tax and filing fees for RP-5217 and TP-584. Surveys, recording fees and, if applicable, mortgage taxes shall be paid by the Purchaser. Seller and Purchaser are each responsible for their own respective attorney's fees.

10. **CLOSING.** The Purchaser must use best efforts to obtain all required Approvals, as defined in Paragraph 14 herein, from the City of Tonawanda and any other applicable governmental authorities. Closing will take place within thirty (30) days following satisfaction or waiver of the contingency for the Approvals as described in Paragraph 12D.

11. **STUDIES, REPORTS, AND GENERAL INFORMATION.** Within thirty (30) days of the full execution of this Agreement, the Purchaser shall be provided directly from Seller with complete copies of all Studies, Reports, and General Information in the possession of the Seller related to the Property. The documentation to be provided pursuant to this Paragraph 11 shall include any environmental reports including but not limited to any Phase 1 environmental reports and any written communications in the Seller's possession regarding environmental conditions from governmental agencies including but not limited to the NYS Department of Environmental Conservation.

12. **NOTICES.** All notices hereunder shall be mailed by certified mail, return receipt requested to the parties' addresses set forth at the beginning of this Agreement and to their attorneys as listed at the end of this Agreement or to such other address as any party may advise the other in writing.

13. **AUTHORIZATION.** The Seller and Purchaser and signors below each represent that they are duly authorized to execute this Agreement.

14. **USE AND APPROVALS.**

A. The Seller and Purchaser each agree that the Purchaser will proceed at its sole expense with best efforts to obtain all necessary approvals and permits

(collectively the "**Approvals**") to create a residential community of approximately 95 attached condominium units on public rights of way with one connection from Fletcher Street to Veterans Park (the "**Community**"). The Community, including the attached condominium units and necessary infrastructure improvements will be constructed in phases with size of each phase to be determined by the Purchaser based on its evaluation of relevant considerations including not limited to market conditions. The Purchaser shall be responsible for design, construction and dedication of the right of way roads and support infrastructure, and to design the road connection to Veterans Park at its sole cost and expense. The Seller shall construct that portion of the road connection which is located on retained portions of Veterans Park at its expense. The Approvals for the Community shall include, but not be limited to, i.) an environmental review of the entire action (including but not limited to the transfer of the Property and all aspects of the proposed Community) pursuant to the State Environmental Quality Review Act ("**SEQRA**") which will be conducted in connection with the proposed rezoning of the Property; ii.) Rezoning; iii.) Site Plan Review; iv) Variances; and v.) all other required approvals and permits. The Purchaser and its counsel shall be responsible for the preparation at the Purchaser's sole expense, of all environmental documentation needed pursuant to SEQRA as well as the land use applications and supporting documentation.

B. During the approval period, the Purchaser shall be allowed to perform reasonable testing on the Property. Purchaser will indemnify, defend and hold harmless Seller from all liability, claims, loss, cost, expense and damage, including attorneys' and paralegals' fees and expenses, arising out of Purchaser's actions on the Property, and Purchaser will promptly repair any damages resulting to the Property due to, including, without limitation, such tests, surveys, inspections and studies. This agreement of indemnity, repair and reimbursement shall survive Closing and/or any termination of this Agreement. Prior to entering upon the Property for any purpose, Purchaser shall provide evidence to Seller that Purchaser carries a policy of commercial general liability insurance, including coverage for bodily injury and death, property damage and personal injury and contractual liability, in the amount of not less than One Million Dollars (\$1,000,000.00), combined single limit per occurrence for bodily injury (or death) and damages to property

C. The Seller and Purchaser have acknowledged four (4) consecutive milestones for this Agreement and the proposed Community, those milestones being as follows:

- i. Contract Execution;
- ii. Approvals;
- iii. Engineering and Design; and
- iv. Closing.

Best efforts shall be used by the Seller and Purchaser to consecutively achieve each of these milestones. The Parties approximate that execution of this Agreement will take place during February 2017 and the approval process for the Community may take the

remainder of 2017. These duration estimates are not binding but the Parties agree that best efforts shall be used to limit the required timeframe as practicable.

D. In the event all of the required Approvals for the Community needed from City of Tonawanda and other governmental agencies have not been obtained prior to December 31, 2017 ("Contingency Period), the Purchaser shall have the right to extend the Contingency Period until June 30, 2018 ("1st Extension of the Contingency Period) by notifying the Seller in writing prior to the expiration of the Contingency Period. In the event all of the required Approvals for the Community have not been obtained by June 30, 2018, the Purchaser shall have the right to extend the Contingency Period from July 1, 2018 to December 31, 2018 (2nd Extension of Contingency Period by notifying the Seller in writing prior to the expiration of the 1st Extension of the Contingency Period. The Purchaser shall in its sole discretion have the right to cancel this Agreement prior to expiration of the Initial Contingency Period or any extensions thereof by providing by written notice to the Seller, and upon such cancellation the Deposit shall be immediately returned to the Purchaser.

15. RESTORATION AND REVERSION. The Parties agree disturbed areas of the Property shall be restored by the Purchaser consistent with the New York State Department of Environmental Conservation Stormwater Pollution Prevention Plan ("SWPPP") which shall be permitted and monitored in accordance with all applicable regulatory requirements. With both parties acknowledging that Community including the necessary infrastructure improvements will be constructed in phases, the Parties agree that the Purchaser shall use its best efforts to effectuate continual progress through and until completion of the entire Community proposed for the Property. The Purchaser shall be responsible for design, construction and dedication of the right of way roads and support infrastructure on the Property, and to design the road connection to Veterans Park at its sole cost and expense. The Seller shall construct that portion of the road connection which is located on retained portions of Veterans Park at its expense. The Purchaser agrees to coordinate monthly informational meetings with adjacent residents, the purpose of such informational meetings shall be to communicate and to make a good faith effort to promptly address any and all reasonable concerns of the adjacent residents. Attached to this Agreement is Exhibit "B" – Concept Site Plan and Exhibit "C" – Style of Home. The Parties agree these exhibits are provided solely for illustrative purposes and are subject to change and review and approval by Purchaser and based on the required review process for the Community. The Purchaser will attempt to provide a 65' setback from the southern property line of the Property to the rear of residences to be constructed.

In the event substantive development activities in furtherance of the Community cease for a period of twelve (12) consecutive months, then title to the undeveloped and unencumbered portions of the Property that are not serviced by infrastructure improvements to be installed in connection with the Community (the "**Undeveloped Property**"), shall revert to the Seller upon the adoption of a resolution by the Common Council requiring conveyance of the Undeveloped Property to the Seller. The Purchaser shall be provided with written notice at least forty-five (45) days prior to any

meeting of the Common Council at which consideration of a conveyance of the Undeveloped Property from the Purchaser to the Seller will be voted upon by the Common Council and such written notice is a material term of this Agreement. Prior to re-conveyance, if any, the Purchaser shall be provided with a 90-day period to cure and reinitiate substantive development activities. The provisions of this Paragraph shall survive Closing of this Agreement.

16. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which will constitute one and the same agreement.

17. APPLICABLE LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

18. BINDING. This Agreement is intended to bind the Seller and Purchaser and those who succeed in their interests.

19. BROKERS. Each party to this Agreement represents and warrants to the other that it has had no dealings with any real estate broker or agent concerning the transaction(s) contemplated by this Agreement.

20. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the Seller and the Purchaser, and nothing is binding on either of them which is not contained herein.

[Remainder of Page Left Intentionally Blank
Signatures on Following Page]

IN WITNESS WHEREOF, this Agreement has been duly executed by Seller and Purchaser as of the dates set forth opposite their respective signatures blocks below.

CITY OF TONAWANDA

Date: February 3, 2017

By: [Signature]
Mayor Rick Davis, Jr. **Judy A. Kurtzworth**
#01KU6160374
Notary Public-State of New York
Qualified in Erie County
My Commission Expires Feb. 5, 2019

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

On the 3RD day of FEBRUARY, in the year 2017, before me, the undersigned, personally appeared Rick Davis, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signatures on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

DAVID HOME BUILDERS, INC.

Date: February 3, 2017

By: [Signature]
David Stapleton, President

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

On the 3RD day of FEBRUARY, in the year 2017, before me, the undersigned, personally appeared David Stapleton, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signatures on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

Judy A. Kurtzworth
#01KU6160374
Notary Public-State of New York
Qualified in Erie County
My Commission Expires Feb. 5, 2019

Environmental and Land Planning

Purchaser's Attorney:

Sean Hopkins, Esq.
Hopkins Sorgi & Romanowski PLLC
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Fax: (716) 242-0606

Seller's Attorney:

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Title and Closing Attorney:

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Jody A. Kuntz
Notary Public-State of New York
Qualified in Erie County
Commission Expires Feb. 6, 20

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Notary Public-State of New York
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Commission Expires Feb. 6, 20

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